Supreme Court, U.S.
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No. 06-744

IN THE

Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY AND AS
CO-EXECUTOR OF THE LAST WILL OF HELEN STACEY
Petitioners

v.

CITY OF HERMITAGE, ET AL.
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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November 21, 2006, Tuesday

QUESTIONS PRESENTED

Petitioners are here for the second time, and the resulting delay is prejudicial to them and to their cause. In October 2005, the U.S. Supreme Court issued its mandate to the Third Circuit Court of Appeals vacating the lower court's judgment ***with costs*** for ***further consideration*** of ***independent claims*** under *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (2005) (see Appendix App. 1). In this context, the following is presented:

1. Whether the Third Circuit on remand was wrong and abused its discretion in failing to consider ***independent pro se claims*** under *Exxon Mobil* concerning:

   (a) The ***state trial judge***, who usurped appellate jurisdiction to deny plaintiff's appeal, but was held by the Third Circuit, apparently as a judge ***per se***, to be "immune from liability," regardless of any injunctive relief available or any exceptions to immunity provided under *Stump v. Sparkman*, 435 U.S. 349 (1978);

   (b) ***Civil conspiracy claims as to warrantless seizures and destruction of private property*** in violation of the Fourth and Fourteenth Amendments;

   (c) Civil conspiracy claims of ***denial of access to the courts*** in violation of the First and Fourteenth Amendments, and

   (d) ***Breach of contract claims.***

2. All the activity and conduct supporting the above claims injured Petitioners and were alleged in their ***pro se*** Complaint. Was the Third Circuit wrong in ***not liberally construing*** the ***pro se*** Complaint under the standards set forth in *Estelle*, *Haines* and *Conley*? [1]

3. Whether the Third Circuit was wrong and abused its discretion in failing to allow Petitioners the right to ***amend their pro se Complaint*** so as to present ***all*** independent claims occurring on or after November 6, 2000.

4. Whether the Third Circuit was wrong when it imposed a ***heightened pleading standard*** on the Petitioners, and failed to clarify Petitioners right to amend any and all viable independent claims that were alleged in their original ***pro se*** Complaint.

5. The U.S. Supreme Court in its mandate plainly ***vacated with costs*** the judgment of the Third Circuit. Did the Third Circuit fail to honor that mandate when it refused to ***award all reasonable costs*** on appeal, including attorney's fees, to Petitioners as prevailing parties in the Supreme Court?

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[1] *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); *Conley v. Gibson*, 355 U.S. 41 (1957).

PARTIES TO THE PROCEEDING

Petitioners:
RAYMOND STACEY, Individually and as
Co-Executor of the Last Will of Helen Stacey; and
ESTATE OF HELEN STACEY.

Respondents:
CITY OF HERMITAGE, Mercer County, Pennsylvania;
GARY P. HINKSON, Individually as City Manager of Hermitage;
EDWARD STANTON, Individually as Police Chief of Hermitage;
RUSSELL V. PENN, JR., Individually as City Inspector of Hermitage;
JEFFREY OSBORNE, Individually as Asst. City Inspector of Hermitage;
ROBERT S. GOELTZ, Individually as Fire Marshall of Hermitage;
JAMES PAT WHITE; Individually as Commissioner of Hermitage;
THOMAS W. KUSTER;
H. WILLIAM WHITE, III;
EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually as Solicitors for Hermitage;
CHRISTOPHER FERRY;
WATTS & PEPICELLI, Attorneys at Law;
JERRY G. CARTWRIGHT, JR., Attorney at Law;
PENN POWER CO. and
OHIO EDISON CO., thru its Employees and Agents;
RICHARD SEREDAY and
ROSEANN SEREDAY, doing business as
SEREDAY EXCAVATING;
VIROSTICK TRANSFER, thru its Owners, Employees and Agents;
WODZIANSKI & SMITH, thru its Owners, Employees and Agents;

RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents;
THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County;
ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING iii

TABLE OF AUTHORITIES vii

PETITION 1

JUDGMENTS AND OPINIONS 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 26

APPENDIX:

U.S. Supreme Court Judgment and Mandate
Stacey v. City of Hermitage, Pa. (unpublished)
(cf. 126 S.Ct. 411)
No. 05-199, entered Oct. 11, 2005 ..... App. 1

Third Circuit Court of Appeals
Stacey v. City of Hermitage, Pa.
Order denying rehearing,
entered Jul. 18, 2006 ..... App. 3-4

Third Circuit Opinion (No.2) and Judgment
Stacey v. City of Hermitage, Pa. (unpublished)
(WestLaw report 2006 WL 1026437)
No. 03-4176, entered Apr. 19, 2006 ..... App. 5-17
Judgment reissued Jul. 26, 2006 ..... App. 19-20

Third Circuit Opinion (No.1) and Judgment
Stacey v. City of Hermitage, Pa. (unpublished)
No. 03-4176, entered Nov. 24, 2004 ..... App. 21-29
Judgment reissued May 19, 2005 ..... App. 30

Petitioners' ***pro se*** Complaint
Stacey v. City of Hermitage, Pa.
Western District of Pa., No. 02cv1911,
filed Nov. 6, 2002 ..... App. 31-46

Petitioners' Amended Complaint
Stacey v. City of Hermitage, Pa.
Western District of Pa., No. 02cv1911,
filed Sep. 5, 2006 ..... App. 47-71
Stricken by opinion & order of Sep. 6, 2006 ..... App. 73-78

Petitioners' ***pro se*** Informal Brief to the
Third Circuit Court of Appeals,
Stacey v. City of Hermitage, Pa., No. 03-4176,
filed Feb. 9, 2004 ..... App. 79-88

Third Circuit Order, awarding $300 on appeal
Stacey v. City of Hermitage, Pa., (No. 03-4176),
entered Jul. 18, 2006, ... App.89-90

Letter of May 18, 2001
Def. Atty. Cartwright to Plt. Ray Stacey
Notice of Appeal filed Sep. 7, 2000
"Judge thought...order was non-appealable" ..... App. 91

TABLE OF AUTHORITIES

CASES

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) 6

Alyeska Pipeline Services Co. v. Wilderness Society, 421 U.S. 240 (1975) 24

Antoine v. Byers & Anderson, Inc., 508 U.S. 429 (1993) 10

Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986) 6, 10

Blonder-Tongue Laboratories Inc. v. U. of Illinois Foundation, 402 U.S. 313 (1971) 15

Bradley v. Fisher, 80 U.S. 335 (1871) 9

Briggs v. Pennsylvania R. Co., 334 U.S. 304 (1948) 12

Charles v. Daley, 846 F.2d 1057 (7th Cir. 1988) 24, 25

Colburn v. Upper Darby Tp., 838 F.2d 663 (3rd Cir. 1988) 20

Conley v. Gibson, 355 U.S. 41 (1957) ..... ii, 6, 17

Dennis v. Sparks, 449 U.S. 24 (1980) 11

Duke Power v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978) 19

Estelle v. Gamble, 429 U.S. 97 (1976) ..... ii, 6

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) ..... i, 1, 3, 7, 15, 16

Foman v. Davis, 371 U.S. 178 (1962) 17, 18

Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1 (1983) 16

Gallas v. S[illegible]me Court of Pennsylvania, 211 F.3d 760 (3rd Cir. 2000) 8, 9

Gillespie v. U.S. Steel Corp., 379 U.S. 148 (1964) 15

Gomez v. Toledo, 446 U.S. 635 (1980) 6, 8, 20, 22

Goodman v. Niblack, 102 U.S. 556 (1880) 15

Haines v. Kerner, 404 U.S. 519 (1972) ..... ii, 6

Hanrahan v. Hampton, 446 U.S. 754 (1980) 26

Hill v. City of New York, 45 F.3d 653 (2nd Cir. 1995) 10

Hughes v. Rowe, 449 U.S. 5, (1980) 6, 23

Hutto v. Finney, 437 U.S. 678 (1978) 25

In re Lower Lake Erie Iron Ore Antitrust Litigation, 710 F.Supp. 152 (E.D.Pa. 1989), aff'd 998 F.2d 1144 (3rd Cir.1993) 11

Independent Federation of Flight Attendants v. Zipes, 491 U.S. 754 (1989) 25

Kulick v. Pocono Downs Racing Ass'n, Inc., 816 F.2d 895 (3rd Cir. 1987) 19

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 23

Lujan v. National Wildlife Federation, 497 U.S. 871 (1990) 23

Maestri v. Jutkofsky, 860 F.2d 50 (2nd Cir. 1988) 9, 10

Marek v. Chesny, 473 U.S. 1 (1985) 25

Mireles v. Waco, 502 U.S. 9 (1991) 8, 9

Moore v. Lockheed Martin Corp.,
238 F.3d 430 (9th Cir. 2000) 6

Newman v. Piggie Park
Enterprises, Inc., 390 U.S. 400 (1968) 25

Pallant v. Sinatra, 7 F.R.D. 293 (D.C.N.Y.1945) 17

Pulliam v. Allen, 466 U.S. 522 (1984) 10

Reserve Mining Co. v. Lord,
529 F2d 181 (8th Cir.1976) 12

Scheuer v.Rhodes, 416 U.S. 232 (1974) 8, 16, 19

Sibbald v. U.S., 37 U.S. 488 (1838) 12, 26

Soldal v. Cook County Illinois,
506 U.S. 56 (1992) 12, 26

Stacey v. City of Hermitage, Pa.
(U.S. Oct. 11, 2005) (No. 05-199)
(summary judgment) 126 S.Ct. 411,..... iv, 1, App. 1

Stacey v. City of Hermitage, Pa. (unpublished)
(3rd Cir. Apr. 19, 2006) (No. 03-4176)
WestLaw report 2006 WL 1026437 ..... v, 1, App. 5

Steel Co. v. Citizens for a Better Environment,
523 U.S. 83 (1998) 19

Stump v. Sparkman, 435 U.S. 349 (1978) ..... i, 7, 8, 9, 10

Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002) 19, 22

Texas State Teachers Ass'n v. Garland
Independent School Dist., 489 U.S. 782 (1989) 26

Zinermon v.Burch, 494 U.S. 113 (1990) 23, 24

STATUTES & RULES

28 U.S.C. § 1254 1

42 U.S.C. § 1983 ..... 2, 6, 11, 13, 15, 20

42 U.S.C. § 1988 25

Pa.R.A.P. Rule 311(a)(4)(ii)
(immediate appeal after injunction dissolved) 9, 21

Pa.R.A.P. Rule 902 (appeal as of right) 9

Pa.R.A.P. Rule 905 (notice of appeal
filed with court clerk) 9, 21

42 Pa.C.S.A. § 762 (exclusive jurisdiction
of appeals in appellate courts only) 8, 9

U.S. Supreme Court Rule 43 ..... 25, 26

Fed. Rule Civ. Proc. 8(a) 16, 19, 22

Fed. Rule Civ. Proc. 15(a) 16, 17, 18

Fed. Rule Civ. Proc. 12(b)(6) 19

OTHER

3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10 18

PETITION

Petitioners Raymond Stacey and the Estate of Helen Stacey are here at the Supreme Court for the second time and respectfully request that a writ of certiorari issue in *Stacey v. City of Hermitage*, No. 03-4176, to the United States Court of Appeals for the Third Circuit to responsibly execute the mandate of the U.S. Supreme Court directing ***further consideration*** under *Exxon Mobil*, 544 U.S. 280, 293 (2005), of independent claims alleged in the Staceys' ***pro se*** Complaint involving the ***state court judge*** and claims of ***civil conspiracy*** and ***breach of contract***, and for the award of ***costs of litigation*** to the Staceys as prevailing parties on appeal.

OPINIONS AND JUDGMENTS

The judgment and opinion of the U.S. Supreme Court were issued October 11, 2005, and appear in the Appendix (App. 1) (see also *Stacey v. City of Hermitage, Pa.*, 126 S.Ct. 411).

The Third Circuit's order denying the Petition for Rehearing was entered on July 18, 2006 (App. 3). The certified copy of the judgment was reissued on July 26, 2006 (App. 18), in lieu of a formal mandate.

The opinion and judgment of the panel for the Third Circuit were entered on April 19, 2006, were "not selected for publication in the Federal Reporter," and appear in the Appendix (App. 5, 18) (see also WestLaw Report 2006 WL 1026437).

JURISDICTION

The Third Circuit's order denying the Petition for Rehearing was entered on July 18, 2006 (App. 3). The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. CONST. amend. I, in pertinent part:
[T]he right of the people . . . to petition the Government for a redress of grievances.

U.S. CONST. amend. IV:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V, in pertinent part:
No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV § 1, in pertinent part:
[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This case is here for the second time before the Supreme Court. The first time, this Court "***vacated with costs***" and remanded "for further consideration" of ***independent claims*** in light of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293 (2005) (App. 1).

In response to the Supreme Court mandate, the Third Circuit concluded that the ***Rooker-Feldman*** doctrine did not bar the Staceys' independent claims in federal court (App. 9-10).

On remand to the District Court, Judge McVerry ***sua sponte*** eliminated the Staceys' independent claims against specific Defendants on the grounds that these claims had all been dismissed by the Third Circuit (App. 73+).

Petitioners' recent notice of appeal to the Third Circuit (No. 06-4119) was filed in response to Judge McVerry's order of September 6, 2006 (App. 73+), which denied reconsideration of his ***sua sponte*** orders of August 1 and 2, 2006, dismissing some defendants and recasting the caption, and from his ***sua sponte*** striking of our Amended Complaint (App. 47+) which the Third Circuit authorized as of right in its opinion and judgment of April 19, 2006 (App. 5).

Petitioner Raymond Stacey and now deceased Plaintiff Helen Stacey filed their original ***pro se*** Complaint (App. 31) on November 6, 2002, in U.S. District Court for the Western District of Pennsylvania. Mother and son filed their ***pro se*** action in response to the seizure and destruction of the Stacey family home and personal property on November 6, 2000 (App. 40 ¶37), in the City of Hermitage (City), Mercer County, Pennsylvania. Both Plaintiffs urged civil conspiracy and breach of contract claims. Mrs. Stacey had additional claims against the lower state court judge and prothonotary (court clerk) for wrongful conduct in denying and refusing to

process her first notice of appeal that arose in the context of state-court injunction proceedings in Mercer County, Pennsylvania, which resulted in the hasty seizure and destruction of the Stacey properties by the City.

In their ***pro se*** Complaint (App. 31), the Plaintiffs raised claims of civil conspiracy, breach of contract and federal constitutional torts under the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution. But the ***Third Circuit did not consider*** the independent claims of wrongful conduct involving ***civil conspiracies*** resulting in the actual (1) seizure and destruction of the Staceys' property without warrants, (2) denial of access to the courts, and claims for ***breach of contract***.

The Third Circuit ruled that the state judge and court clerk were immune from suit, though at the pre-answer stage no evidence as to their conduct had yet come before the District Court. See ***pro se*** Complaint at App. 40+ ¶¶ 35, 40-41; Amended Complaint at App. 52+ ¶¶ 3-4, App. 57, App. 63 ¶ 41, App. 65 ¶ 47-48, App. 68 ¶ 61; CA3 *pro se* Brief at App. 83-84; Letter of 5/18/2001 at App.91.

Petitioners believe the writ should issue in this case because it is clear and indisputable that certiorari will prevent the Third Circuit from abdicating its responsibility to execute the mandate of the Supreme Court directing the Third Circuit's "further consideration" of the case and to honor the Supreme Court's award of costs of litigation to Petitioners as the prevailing party in the Supreme Court.

The Third Circuit's ***departure from the terms*** of the Supreme Court's mandate demonstrates an ***exceptional circumstance warranting the exercise of this Court's supervisory powers***.

Petitioners ***cannot obtain adequate relief elsewhere, and have no recourse without the intervention of this Court***. The

Third Circuit's demonstrable pattern of delay in this matter [2] also presents an exceptional circumstance meriting relief by this Court through certiorari or mandamus, which should be faster. (Petitioners have pending a companion Petition for Writ of Mandamus).

It is apparent that the Third Circuit to honor or execute the mandate of the Supreme Court and thus leaves the Petitioners with no avenue of relief other than supervision by this Court. The Third Circuit given its departure from standard appellate practice has created a system on appeal which will guarantee that Petitioners are the losers, ***even though they have already prevailed on certiorari in this Court***. Petitioners can go nowhere else for redress or relief.

REASONS FOR GRANTING THE WRIT

When the Staceys filed their original ***pro se*** Complaint in 2002 (App. 31), they were ***pro se*** in every sense of the word. They were poor, elderly—mother Helen at 92 and son Raymond at 62—and had to rush on the last day to beat by 20 minutes the statute of limitations deadline of November 6 (App. 12, 24, 79 ques. 2). They had absolutely no access to forms or samples, and no advice on what to put in or leave out of their complaint. The Staceys were not attorneys and had no recourse to counselors or "jailhouse lawyers" to advise them. (App. 80+fn 1).

The first time around, the District Court dismissed completely the Staceys' ***pro se*** Complaint and ***all*** their ***pro se*** claims. Likewise, the Third Circuit affirmed ***most*** of the dismissals. (App. 21 *et seq.*)

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[2] The Third Circuit panel took almost seven months to reply to and deny Petitioners' motion to recall the Third Circuit mandate in the District Court. Petitioners were unsure as to what motion practice they were entitled to with the mandate still in the District Court.

The Supreme Court holds that a ***pro se*** complaint should be less stringently read than those written by attorneys, and more generously viewed and liberally construed in favor of the ***pro se*** plaintiff. The ***pro se*** claim or complaint should not be dismissed if the plaintiff can prove any set of facts that support his claim that would entitle him to relief. *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). In parsing § 1983, the Supreme Court further emphasizes its adoption of the notice pleading standard:

> By the plain terms of § 1983, two--and only two--allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state . . . law.

Gomez v. Toledo, 446 U.S. 635, 640 (1980); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150, 152 (1970) (§ 1983 conspiracy shown against private person as "willful participant in joint activity with the State or its agents").

The Third Circuit in the Stacey case was wrong in not construing their ***pro se*** Complaint with full liberality. In this respect, the Third Circuit is in conflict not only with the Supreme Court but with other circuits who have applied liberal construction to ***pro se*** complaints in ferreting out imbedded claims—like the ***pro se*** claims the Petitioners the state judge, claims for civil conspiracy, or claims for breach of contract. Cf., e.g., *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986) (conspiracy involving judge alleged); *Moore v. Lockheed Martin Corp.*, 238 F.3d 430 (9th Cir. 2000) (contract alleged).

I STATE COURT *JUDGE* AND *CLERK ARE NOT IMMUNE*

(a) The Third Circuit reversibly erred on remand by failing to "*further consider*" the sufficiency of *pro se* claims against the state *trial judge who usurped appellate jurisdiction* to deny Plaintiff's appeal

In its first opinion, which was vacated by the Supreme Court, all the Third Circuit panel had to say in relation to denial of access to the courts in violation of the First Amendment, was this:

> [T]he state court judge is immune from liability, Stump v. Sparkman, 435 U.S. 349, 357 (1978). (App. 28).

In its second opinion (on remand), the panel said exactly the same thing:

> [T]he state court judge is immune from liability, Stump v. Sparkman, 435 U.S. 349, 356 (1978). (App. 16).

The only difference is the page number in the citation. This is hardly "further consideration in light of *Exxon Mobil*" for the contested immunity of the state court judge. The Third Circuit was directed on remand from the U.S. Supreme Court to "further consider" its judgment and analysis of law of ***independent claims*** in light of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (2005). In *Exxon*, it was emphasized by the Court that the ***Rooker-Feldman*** doctrine does not bar a litigant from raising independent federal claims in a federal forum. The Third Circuit reaffirmed its first determination on this subject summarily (i.e. without any analysis whatsoever) though the Court was indeed ordered to reconsider its earlier (and erroneous) conclusions. In light of the fact that the record at this stage of

the proceedings was totally undeveloped as to the factual details of the judge's conduct, summary disposition of these questions on remand was improper.

The issue raised by the Petitioners that had to be decided on remand by the Third Circuit included questions as to whether a judge loses immunity for actions taken in complete absence of all jurisdiction. As a matter of law, a common pleas judge with no statutory authority to do so cannot assume appellate jurisdiction to effectuate dismissal of an appeal; nor does the judge have the authority to persuade a clerk of court to refuse to process a notice of appeal. As was said in *Scheuer v.Rhodes*, 416 U.S. 232, 236 (1974), "When a federal court reviews the sufficiency of a complaint, before the reception of any evidence....its task is necessarily a limited one." The Court in *Scheuer* went on to say that if immunity is qualified and not absolute, "the scope of that immunity will necessarily be related to facts as yet not established by affidavits, admissions or a trial record....it can hardly be argued, at this late date, that under no circumstances can the officers of state government be subject to liability." *Scheuer*, at 242-43; *Gomez v. Toledo*, at 640+.

In Pennsylvania, exclusive jurisdiction over appeals is vested in the appellate courts. The "Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas." 42 Pa.C.S.A. § 762. Under *Stump v. Sparkman*, 435 U.S. 349 (1978), a judge can lose immunity for actions taken in complete absence of all jurisdiction. See *Mireles v. Waco*, 502 U.S. 9 (1991); accord *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760 (3rd Cir. 2000). In *Stump*, this Court gave the example of a probate judge who presides over a criminal case: "[H]e would be acting in the clear absence of jurisdiction and would not be immune from liability." *Id.* at 357, n.7.

A common pleas judge with no statutory authority cannot assume appellate jurisdiction to effectuate dismissal of an appeal or convince a court clerk to refuse to process a notice of appeal. See *Mireles*, at 12-13; *Maestri v. Jutkofsky*, 860 F.2d 50, 52-53 (2nd Cir. 1988); both citing *Bradley v. Fisher*, 80 U.S. 335 (1871).

A judge also loses immunity for ***nonjudicial acts***—acts that are not normal functions of the judge and outside the expectations of the parties. *Mireles*, at 12. It is not a normal function of Pennsylvania common pleas judges to usurp appellate jurisdiction, and to counsel or persuade court clerks to refuse to process appeals.

Petitioners urge that there should be no grant of absolute judicial immunity under the facts of this case because a judge of general jurisdiction should have no "vertical" reach to meddle with appeals and appellate jurisdiction where there is no statutory authority; otherwise the judge would himself be judge of his own actions!

The expectation of Plaintiff Helen Stacey when she filed her "first" notice of appeal was that she would be dealing with the appellate courts, not the trial judge, under appellate rules of procedure. See *Mireles*, at 12 (the test of "expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity"), quoting *Stump*, 435 U.S. at 362; accord *Gallas*, 211 F.3d at 768+. See also Pa.R.A.P. Rule 311(a)(4)(ii) (immediate appeal from decree nisi dissolving injunction), Rule 902 (appeal as of right), Rule 905 (notice of appeal filed with court clerk); 42 Pa.C.S.A. § 762 (exclusive jurisdiction of appeals vested in appellate court).

After ex parte meetings with the City solicitor (App. 53 ¶ 4), the judge in Helen Stacey's case stated that the order denying Helen's temporary injunction was "interlocutory"

and, therefore, non-appealable. See Amended Complaint at App. 53, CA3 *pro se* Brief at App. 84. Consequently, the court clerk refused to process the appeal papers (App. 40 ¶35, App. 91), which resulted in the immediate and secret destruction of the family home with all of Helen and Raymond's possessions still inside. [3] Beyond that she was denied the only opportunity ever to have her own engineer inspect the building's renovated foundation to counter the City and its experts, who secretly inspected without warrants and removed possessions of the Staceys without an inventory.

On remand, the District court erred in prematurely dismissing the ***pro se*** Complaint without reception of evidence as to Helen Stacey's claim against the state judge, and the Third Circuit has erred for the second time in summarily, without reconsideration or analysis, reaffirming that the judge is immune from suit (App. 16), apparently on the basis of being a judge ***per se***, regardless of any injunctive relief available or any exceptions to immunity. But there are exceptions to absolute immunity as pointed out above in *Stump*, *Maestri* and *Ashelman*; *Pulliam v. Allen*, 466 U.S. 522 (1984) (injunctive relief and attorney's fee awarded against magistrate).

It is the party asserting the defense of immunity who bears the burden of proving its applicability. See Fed. Rule Civ. Proc. 8(c); *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993); *Hill v. City of New York*, 45 F.3d 653, 660 (2nd Cir. 1995) ("absolute immunity from claims based on such conduct cannot be decided as a matter of law on a motion to dismiss", *id.* at 663).

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[3] Old family photographs, bibles and religious articles, original artwork, old collections of magazines, comics and music, school yearbooks, birth certificate and social security card, army uniforms and medals, tax returns and receipts, and much more, plus 50 years of memories.

(b) The Third Circuit failed to responsibly and plainly consider the survival of *civil conspiracy* and breach of *contract claims* as raised in the *pro se* Complaint

The lower courts in their opinions and judgments do not mention the terms "civil conspiracy" or "contract" (in reference to breach). Neither the appellate court nor the district court considered the fact that the Plaintiffs (the Staceys) raised in their ***pro se*** Complaint (App. 31) specific claims of:

(1) Civil conspiracy to seize and destroy the Staceys' property in violation of the Fourth and Fourteenth Amendments. See App. 39 ¶ 31, App. 40 ¶ 36, App. 42 ¶ 47, App. 43 ¶ 49, App. 44 ¶¶ 56-57 CA3 ***pro se*** Brief at App. 80+; and stricken Amended Complaint at App. 51+. See *Soldal v. Cook County Illinois*, 506 U.S. 56, 59-60 (1992); *In re Lower Lake Erie Iron Ore Antitrust Litigation*, 710 F.Supp. 152 (E.D.Pa. 1989), aff'd 998 F.2d 1144 (3rd Cir.1993)

(2) Civil conspiracy to obstruct the Staceys' access to courts in violation of the First and Fourteenth Amendments. See App. 40 ¶ 35, App. 41-42 ¶¶ 38-42; CA3 ***pro se*** Brief at App. 80+; and stricken Amended Complaint at App. 51+, App. 64-65 ¶ 45. *Dennis v. Sparks*, 449 U.S. 24 (1980); *Lower Lake Erie*, *supra*.

(3) Breach of contract by the electric utility Penn Power and by the Staceys' attorneys. See App. 36-37 ¶¶ 12 "retained", 13 "retained", 14 "regulated"; CA3 ***pro se*** Brief at App. 82, 83, 86; and stricken Amended Complaint at App. 56, App. 59 ¶¶ 16, 17, App. 68 ¶ 62. Pennsylvania has a 4-year statute of limitations on these types of contracts, which is two years longer than that for § 1983 claims. Claims on the contracts

would not be time-barred by the opinion and judgment of the Third Circuit. See App. 12, 13, 16).

None of these issues and claims is raised here for the first time. They are alleged directly and by implication in the original ***pro se*** Complaint (App. 31), and they were raised on appeal at the Third Circuit in Petitioners' ***pro se*** form Brief (App. 79)—not to mention the two Petitions for Rehearing we filed with the Third Circuit in the last two years. In the District Court, these claims were clearly raised in Petitioners' Amended Complaint of August 21, 2006 (App. 47-71), which was stricken in toto by the District Court (App. 73-78). [4]

Like the lower courts, no Defendant responded in any fashion whatsoever to the claims of civil conspiracy or breach of contract. Nor did the district or appellate court mention by name "civil conspiracy" or "contract" or make any statement as to why such claims should be dismissed. The instant Petition arises from continued proceedings in a court that is bound to honor the U.S. Supreme Court's mandate in letter and in spirit, after remand. See *Sibbald v. U.S.*, 37 U.S. 488 (1838), *Briggs v. Pennsylvania R. Co.*, 334 U.S. 304 (1948). The Third Circuit has an equivalent duty to discourage deliberate defiance of its mandates issued on remand to district courts. See *Reserve Mining Co. v. Lord*, 529 F2d 181 (8th Cir.1976). The mandate of the appellate court forecloses the district court from any attempt to reconsider matters determined in the appellate court, or to tamper with the law of the case. All that is left to the discretion of the District Court is any matter not disposed of on appeal. The plaintiffs' claims for breach of contract were not disposed of or passed on by the appellate court, but were and are matters alleged and raised in the original ***pro se***

---

[4] Because of all the obstacles and problems experienced with this case in the last six years, Petitioner Raymond Stacey feels "like there's a secret adversary somewhere in the system working against us."

Complaint. These claims were clearly never dismissed by the Third Circuit, as it never actively considered disposition of these claims. The mandate of the Third Circuit cannot be construed in such a fashion as to authorize dismissal of these claims by the District Court, in reliance on Third Circuit authority.

In its Opinion of April 19, 2006, the Third Circuit held that "[T]he Staceys' § 1983 claims arising out of the events that occurred on November 6, 2000 and thereafter are not time-barred." (App. 12; WestLaw report 2006 WL 1026437, at 3). This would implicate the Staceys' ***civil conspiracy and independent § 1983 claims*** as originally raised in their ***pro se*** Complaint through factual pleadings, (App. 31 *et seq.* ¶¶ 31, 36, 47, 49, 56, and 57). Nothing in the language of the Third Circuit's opinion justifies or remotely suggests dismissing or time-barring any of the civil conspiracy claims that took place on November 6, 2000, against Defendants Richard English & Associates, Wodzianski & Smith, Virostick Transfer, and Penn Power and Ohio Edison.

Each of these Defendants as co-conspirators were willing participants with the City of Hermitage and had a hand in some way with the warrantless seizure and destruction of the Staceys' property (real and personal) ***on or after November 6, 2000***:

- English and Wodzianski & Smith were at court that day with the City of Hermitage to testify against Helen Stacey's injunction. (App. 37 ¶ 17 "hired", App. 40 ¶ 36 "searched", App. 53 "in state court", App. 60-61 ¶ 21 "appeared as surprise witnesses against Mrs. Stacey").

- Virostick received property of the Staceys seized by the City that day. (App. 37 ¶ 16 "moving company",

App. 39 ¶ 31 "seized personal property", App. 60 ¶ 20 "continue to withhold the property").

- The utility company had a last clear chance that day and a legal duty under contract and state law to reconnect electric power to the Stacey home (App. 37 ¶ 14 "regulated by the Pennsylvania Public Utility Commission", App. 39 ¶ 31 "seized personal property without consent", App. 56 "willing participants with the City . . . to disconnect electric power to the Stacey home in violation of . . . the contract . . . [and] refused to return electric power", App. 68 ¶ 62 "breached their contractual obligations"). The Staceys needed the electricity so their experts could inspect and appraise the home (App. 56, App. 64-65 ¶ 45). They needed the electricity to remove valuable personal property and to continue restoring the building's foundation (App. 56-57) to bring it in compliance with the City's building code prior to sale to one of several buyers (App. 62 ¶ 28, App. 82-83) interested in the commercial structure in a prime locate on in the City (App. 42 ¶ 49, App. 44 ¶ 57, App. 52 ¶ 3, App. 66 ¶ 54).

All this concerted conduct and activity on November 6, 2000, injured the Staceys, and the seizure and destruction of their property took place without benefit of warrants or due process in violation of the Fourth and Fourteenth Amendments. See Soldal, *supra*. The Supreme Court mandate in the Stacey case required the lower court to consider these independent claims. The District Court and Third Circuit appear to be steadfastly determined to ignore the imperatives of the Supreme Court. (And it's high time the dismissed Defendants face the music and take responsibility for their wrongful conduct!)

The Third Circuit is bound to abide by the law of the case as determined by the U.S. Supreme Court, i.e., Petitioners through their application to the Supreme Court secured the ***right to bring independent claims in a federal forum***.

Without intervention of the Supreme Court's under its supervisory powers to enforce judgment and mandate issued to the lower courts, Plaintiffs are at risk of losing claims which were preserved for ultimate review on their merits by Supreme Court order, as the result of the silence of the Third Circuit as to the viability of these specific claims. The Third Circuit should have spoken explicitly as to the ***survival of these independent claims***. Because it failed to do so, the District Court erroneously concluded that the conspiracy claims were dismissed. But the Third Circuit in executing the mandate of the Supreme Court had a duty to respect the law of the case as established by this Court, and thus could not dismiss as nonviable any independent § 1983 claim—including the civil conspiracy and breach of contract charges. Plaintiffs have a right to be assured of the survival and consideration of these claims in the District Court, and a right to prove their claims at trial. Without the supervision of the Supreme Court to enforce its mandate, Petitioners' right to assert these independent claims in a federal forum will be lost.

II THE THIRD CIRCUIT FAILED TO SAFEGUARD THE RIGHT OF THE PLAINTIFFS TO *AMEND THEIR PRO SE COMPLAINT*

Petitioners are of the belief that the mandate of the U.S. Supreme Court, which directed the Third Circuit to heed and understand the conclusions reached in *Exxon Mobil* as to the scope of a federal forum's jurisdiction over independent federal claims (presented for resolution on their merits) made it necessary for the Third Circuit on remand to honor both the mandate and the viability of such claims, and to

safeguard the Plaintiffs' right to amend to avoid subsequent dismissal; i.e., to correct or amplify any insufficiently stated claim. As this Court has emphasized in numerous opinions on the subject, a liberal policy toward allowing amendment of the complaint furthers one of the basic objectives of the federal rules—determination of cases on their merits. See *Goodman v. Niblack*, 102 U.S. 556 (1880); *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148 (1964); Blonder-Tongue Laboratories, Inc. v. U. of Illinois Foundation, 402 U.S. 313 (1971).

Petitioners have the right to amend their Complaint as they wish in reliance on Federal Rule of Civil Procedure 15(a) before all responsive pleadings are served, in reliance on the mandate of the Supreme Court, and in reliance on the Third Circuit's reconsideration of this case in light of *Exxon Mobil*.

Rule 8(a) of the Federal Rules of Civil Procedure establishes a pleading standard to be imposed without regard to whether a claim will succeed on the merits. In their ***pro se*** Complaint, Plaintiffs were not required to prove the legal theory that the judge was not entitled to immunity; nor were the plaintiffs required to anticipate in their Complaint the merits of the judge's immunity defense. A federal court must determine whether a case is one arising under federal law based on "the plaintiff's statement of his own claim in the [complaint], unaided by anything alleged in anticipation of avoidance of defenses." *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 10 (1983) (citation omitted). The District Court and the Third Circuit were wrong on a motion to dismiss to consider the merits of the state judge's anticipated immunity defense in attempting to assess the sufficiency of the Plaintiffs' claims. *Scheuer*, at 236

If the Third Circuit has indeed given the Plaintiffs the right to amend the claims in their ***pro se*** Complaint as originally set forth (App. 31), that court has failed to make it apparent in its judgment and opinion (App. 5). As a result, the Third Circuit has confused the litigants and the District Court as to the status of Plaintiffs' right to amend. It is the position of the Petitioners that the Third Circuit recognized that Plaintiffs retain the right to amend their complaint, and that this right extends to their ***amending claims against the state judge***.

It should also be emphasized that no responsive answers have been filed to the Staceys' Complaint (with the exception of one defendant out of 21); thus in a multiple defendants/claims case, the Plaintiffs as a matter of law have not lost their ability to amend as of right, i.e., without leave of court. Fed. Rule Civ. Proc. 15(a). As one court has stated:

> [W]here a claim asserted by a plaintiff is against a number of defendants jointly liable for their combined conduct or acts, that to such a claim, "a responsive pleading" is not served until all of the defendants have answered the claim, not just some of them. In respect of such claims of joint liability, * * * the plaintiff * * * could serve an amended complaint as of right.

Pallant v. Sinatra, 7 F.R.D. 293, 300 (D.C.N.Y.1945)

Even if the plaintiffs erroneously move for leave to amend before their time to amend as of right has expired, amendment must be allowed as of right.

As this Court held in *Foman v. Davis*, 371 U.S. 178, 181 (1962), "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities":

> 'The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.' *Conley v. Gibson*, 355 U.S. 41. . . . The Rules themselves provide that they are to be construed 'to secure the just, speedy, and inexpensive determination of every action.' Rule 1. * * * Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason . . . the leave sought should, as the rules require, be 'freely given.'. . . ***[O]utright refusal to grant the leave*** without any justifying reason appearing for the denial is not an exercise of discretion; it is merely ***abuse of that discretion*** and inconsistent with the spirit of the Federal Rules.

Foman, at 181-182 (emphasis added).

III THE THIRD CIRCUIT REVERSIBLY ERRED WHEN IT IMPOSED A *HEIGHTENED PLEADING STANDARD* ON THE PLAINTIFFS

A federal court must determine whether a case is one arising under federal law based on what appears in the plaintiff's statement of his own claims in the complaint, unaided by anything alleged in anticipation or avoidance of defenses. Plaintiff was not required to prove in his ***pro se*** complaint that the judge was not entitled to immunity; nor was plaintiff required to anticipate in his complaint the merits of a state court judge's immunity defense. Imposition of any heightened pleading standard on the ***pro se*** plaintiff at the

pleading stage of suit, even in the context of a civil rights action against a state court judge, is strictly forbidden by recent Supreme Court authority dealing explicitly with this subject. See *Scheuer v.Rhodes*, 416 U.S. 232 (1974); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); *Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895 (3rd Cir. 1987). The Third Circuit has no right to prejudge the factual issues determinative of the state court judge's immunity at this stage of the proceedings, without reception of evidence. Any attempt by the Third Circuit to impose a heightened pleading standard on the Petitioners constitutes reversible error. Rule 8(a) of the Federal Rules of Procedure establishes a pleading standard without regard to whether a claim will succeed on the merits. The truth of the facts alleged in the complaint is a question on the merits, "as is the legal question whether the facts alleged establish a violation." *Kulick*, at 898-99, citing *Duke Power v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 70-71 (1978).

The Third Circuit has spoken at great length in regard to their controlling standard of review:

> To sustain the dismissal of a complaint under Fed.R.Civ.P. 12(b)(6), "'we must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff,' and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." * * * [T]he crucial questions are whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer." . . . We have routinely held that complaints comply with this standard if they allege the specific ***conduct*** violating the plaintiff's rights, the ***time*** and the ***place*** of that conduct, and the ***identity*** of the responsible officials. . . .A plaintiff is not required to provide either

> proof of her claims or "a proffer of all available evidence" because in civil rights cases "much of the ***evidence*** can be developed only ***through discovery***" of materials held by defendant officials. * * * Moreover, we have held that "failure to ***permit amendment*** of a complaint dismissed for want of specific allegations constitutes an abuse of discretion

Colburn v. Upper Darby Tp., 838 F.2d 663, 665-66 (3rd Cir. 1988) (citations omitted). The Supreme Court has clarified the requirements of § 1983 in *Gomez v. Toledo*, 446 U.S. 635, 640 (1980):

> By the plain terms of § 1983, two--and only two--allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state . . . law.

Even under the prevailing, highly improper and exacting, ***standard of review in the Third Circuit***, Petitioners would argue that their original ***pro se*** Complaint sufficiently alleged that the conduct of both the state trial judge and court clerk deprived Helen Stacey of her right of access to the courts as secured by the First Amendment to the U.S. Constitution. Mrs. Stacey made the following allegations and claims against the judge and court clerk in the original ***pro se*** Complaint (App. 31):

> 19. Defendant Elizabeth F Fair is the prothonotary of the Court...and as such it was her duty...***not to cause injuries to plaintiffs or deprive them of their civil rights*** . . . (App. 38)
>
> 33. Plaintiff[Helen Stacey was] issued a temporary injunction preventing demolition. . . . (App. 40)

34. The temporary injunction was vacated a few days later by defendant Judge Dobson after a hearing. . . .

35. Plaintiff Helen Stacey, through Attorney Cartwright, filed an immediate notice of appeal which by fraud . . . in the Mercer County court system on the part of defendants Judge Dobson and Prothonotary Fair, was not docketed or processed per the Pennsylvania Rules of Appellate Procedure, and Plaintiff's motion for appellate stay was rejected despite the fact her $50,000 trial bond was still active in favor of the City. * * *

40. Defendant Judge Dobson was not impartial and showed bias against plaintiffs. . . . The judge prevented the processing of plaintiff's [Helen Stacey's] notice of appeal of 9/7/2000 when the temporary injunction was vacated by the ***decree nisi*** which changed the status quo between the parties and is ***appealable as of right under Rule 311(a)(4)(ii)*** of the Pennsylvania Rules of Appellate Procedure. The ***judge had discussions about the case with the City's attorney outside the presence of plaintiff or plaintiff's attorney***. (App. 41)

41. On ***November 6, 2000***, when the final decree was entered on the docket, defendants Judge Dobson and ***Protonotary Fair made no effort*** to have plaintiff's [Helen Stacey's] notice of appeal processed ***as required by Rule 905*** of the Rules of Appellate Procedure:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date...which date shall be shown on the docket. . . . A ***notice of appeal filed*** . . . ***before the entry of an appealable order shall be treated as filed after such entry and on the day thereof*** * * * The ***clerk shall immediately transmit to*** . . . ***the appellate court*** . . . ***a copy of the notice of appeal showing the date of receipt***

> 52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983. (App. 43)
>
> 57. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs' family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild, the nonconforming structure. (App. 44)

As we have said, in view of the liberal pleading notice standards in force in all federal forums, any attempt to impose a heightened pleading standard on the Plaintiffs would constitute reversible error:

> A requirement of greater specificity for particular claims is a result that "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." Furthermore, Rule 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test."

Swierkiewicz, at 515. (Citations omitted).

Plaintiffs' Complaint satisfies the federal notice pleading standard because it gives the government defendants fair

notice of the bases for Plaintiffs' claims against them and makes it possible for them to answer. On an appeal from a motion to dismiss on the pleadings, the court ***must*** presume that the general allegations in a complaint encompass specific facts necessary to support those allegations. See *Gomez v. Toledo*, at 640+, *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

The ***Third Circuit has erred*** because it has ***prejudged*** the truth of the facts alleged in the ***pro se*** Complaint on their merits.

On a defendant's motion to dismiss, the allegations of the complaint are to be taken as true in favor of the plaintiff. *Hughes v. Rowe*, 449 U.S. 5, 10 (1980). To fail to do so is indeed reversible error. The writ should be granted because neither the District Court nor the Third Circuit had any right to evaluate the worth of the state actor's anticipated defense in assessing the sufficiency of the plaintiffs' claims at the pre-answer stage of these proceedings. The Due Process Clause encompasses the guarantee of fair procedure. The process the state provided was constitutionally defective because it took away from plaintiffs the First Amendment right of access to the courts, i.e., the right to meaningful review of the state court order dissolving the injunction (including the evidence destroyed and the legal claims lost for injunctive relief with the destruction of the Staceys' private property resulting from the warrantless demolition of the family home by the City of Hermitage). A federal remedy must be provided if the state remedy is adequate in theory, but not available in practice. *Zinermon v. Burch*, 494 U.S. 113, 124 (1990). Plaintiff Helen Stacey alleged in the ***pro se*** Complaint that her statutory right of appeal in practical effect was not made available to her as the direct result of willful, egregious, reckless conduct of a state court judge.

As this Court held in *Burch*, the root requirement of the Due Process Clause is that an individual be given an opportunity for hearing before he or she is deprived of any significant protected interest. Summary dismissal of the Staceys' civil rights claims against the state court judge, and other Defendants involved in wrongful seizure of their property, at this stage of the proceedings deprives the Petitioners of a significant and protected interest in their right of access to the courts and under the Fourth Amendment, without opportunity for hearing, and without opportunity for presentation or reception of evidence as to the truth of their allegations.

IV THE THIRD CIRCUIT FAILED TO HONOR THE MANDATE OF THE U.S. SUPREME COURT BY REFUSING TO *AWARD COSTS* OF APPEAL (INCLUDING ATTORNEY'S FEES) TO PETITIONERS AS PREVAILING PARTIES IN THE SUPREME COURT

The Third Circuit stated in its judgment of April 19, 2006, that "Each party shall bear its own costs." (App. 20) In its order of July 18, 2006, denying our motion of last December to recall its mandate and for appellate costs and attorney's fees (App. 89-90), the court amended its determination only enough to reflect that the losers (Defendants) on remand were responsible for paying the $300 clerk's fee in the Supreme Court. The Third Circuit did not change its order to reflect that costs of litigation in the Supreme Court, and costs on appeal, had been awarded to Petitioners. (App. 1) The ***Third Circuit thus deliberately evaded*** its duty to carry out the ***command of the Supreme Court*** as laid down in its mandate ***awarding costs of appeal to Petitioners***.

Section 1988 of the Civil Rights Attorney's Fees Awards Act of 1976 provides in relevant part that in any action or proceeding to enforce the provisions of section 1983, a

federal court in its discretion may allow the prevailing party a reasonable attorney's fee as part of the costs. The Court in *Alyeska* reaffirmed its earlier holding in *Newman* that where Congress has so provided an award of attorney fees, it should *ordinarily* be made to the successful plaintiff absent exceptional circumstances. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968); *Alyeska Pipeline Services Co. v. Wilderness Society*, 421 U.S. 240, 262 (1975); *Charles v. Daley*, 846 F.2d 1057, 1063 (7th Cir. 1988).

A prevailing party is entitled to recover reasonable attorney fees ***unless special circumstances would render such an award unjust***. *Independent Federation of Flight Attendants v. Zipes*, 491 U.S. 754, 759 (1989). ***Petitioners are entitled to attorney fees both under the traditional auspices of 42 U.S.C. § 1988, and in light of the specific terms of the mandate of this Court***.

In *Hutto v. Finney*, 437 U.S. 678 (1978), the Supreme Court concluded in its holding that attorneys' fees could properly be categorized and included as "costs." This holding constituted "[a]cknowledgment by the Court that Congress had the authority to characterize fee awards as an item of costs." *Charles v. Daley*, 846 F.2d at 1071.

Petitioners sued defendants in the district court under 42 U.S.C. § 1983. Pursuant to the Civil Rights Attorneys' Fees Award, a § 1983 action may be awarded attorney's fees "as part of the costs." Congress expressly included attorney's fees as "costs" available to a plaintiff in a § 1983 suit. The term costs is construed to include attorney fees as authorized under § 1988. See *Marek v. Chesny*, 473 U.S. 1 (1985).

A prevailing party in the U.S. Supreme Court has a right to recover § 1988 fees; Supreme Court Rule 43 authorizes an award of costs to any party whose circumstances fall within the proceedings as defined in Rule 43. However, "it is section

1988, ***not*** Supreme Court Rule 50 [now Rule 43], that is the substantive source of attorneys' fees at issue here and there is ***no disputing that the language of section 1988 ties attorneys' fees directly to an award of costs***." *Charles v. Daley*, 846 F.2d at 1073. (Emphasis added).

In *Texas State Teachers Ass'n v. Garland Independent School Dist.*, 489 U.S. 782 (1989), the Court stated that '[i]n discussing the availability of fees *pendente lite* under § 1988, we have indicated that such awards are proper where a party "has ***established his entitlement*** to some relief on the merits of his claims, either in the trial court ***or on appeal***."' *Id.*, at 790, quoting *Hanrahan v. Hampton*, 446 U.S. 754, 757 (1980). (Emphasis added). The Court elaborated on this principle further:

> [I]f petitioners' ***victory*** . . . had been only an ***interim one***, with other issues remanded for further proceedings in the District Court, petitioners would have been ***entitled to some fee award*** for their successful claims under § 1988. Congress cannot have meant "prevailing party" status to depend entirely on the timing of a request for fees: A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought, ***either pendente lite or at the conclusion of the litigation***.

Texas State Teachers, at 790-791. (Emphasis added).

In the instant case, the mandate and judgment of the U.S. Supreme Court awarded costs of litigation to the Staceys as the prevailing parties in this Court (App. 1), and on appeal from the Third Circuit's opinion in their case. The Third Circuit is bound by the law of the case to award costs, according to the terms of the Supreme Court mandate. The ***Court of Appeals has no right to review the award of costs for error, or to give costs to some other party in the case, and has no right to alter the award assigned to Petitioners***; "nor intermeddle with it." *Sibbald*, 37 U.S. at 491.

CONCLUSION

The Staceys have gone to great lengths in time and expense to bring these challenges from the lower courts. But the Third Circuit has undone those efforts by neglecting to honor and carry into execution the mandate of this Court. Therefore, it is important to Petitioners that the writ be taken up by the Court to recover the ground that has been lost. Only this Court's guidance and supervision can correct the injustice.

It is clear that certiorari will prevent the Third Circuit from abdicating its responsibility to properly consider this case and to award reasonable costs of appeal to Petitioners as prevailing parties here. The Third Circuit's departure from the terms of the Supreme Court's mandate demonstrates an exceptional circumstance warranting intervention and the exercise of this Court's supervisory powers. Anything less and Petitioners will not obtain adequate relief from the Defendants. nor overcome the pain, delay and intransigence caused by the lower courts.

The writ should be granted.

Respectfully submitted,

s/ Janice Haagensen

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Date: November 21, 2006, Tuesday

APPENDIX

Supreme Court of the United States

Revised

05-199

No.

RAYMOND STACEY, INDIVIDUALLY and as CO-EXECUTOR OF THE LAST WILL OF HELEN STACEY,

Petitioner

v.

CITY OF HERMITAGE, PENNSYLVANIA, ET AL.

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Third Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the petition for writ of certiorari is granted, and the judgment of the above court in this cause is vacated with costs, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. [280] (2005).

IT IS FURTHER ORDERED that the petitioner Raymond Stacey, Individually and as Co-Executor of the Last Will of Helen Stacey recover from the City of Hermitage, Pennsylvania, et al., Three Hundred Dollars ($300.00) for costs herein expended.

October 11, 2005

Clerk's costs: **$300.00**

App. 3

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-4176

RAYMOND STACEY, Individually
and as Co-Executor of the Last Will of Helen Stacey,
Appellant
v.
CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE, Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotaiy of Mercer County, thru her Office, Employees and Agents *
*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(W.D. Pa. Civ. No. 02-cv-0191 1)
District Judge: Honorable Robert J. Cindrich

Present: SCIRICA, Chief Judge, SLOVITER,
McKEE, RENDELL, BARRY, AMBRO,
FUENTES, SMITH, FISHER, VAN ANTWERPEN,
CHAGARES and ROTH [1], Circuit Judges

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing filed by petitioners having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Marjorie 0. Rendell

Circuit Judge

Dated: July 18, 2006
ARL/cc: Mr. Raymond Stacey; All Counsel of Record

[1]Pursuant to lOP 9.6.4, any judge participating in an en banc poll, hearing or rehearing while in regular active service who subsequently takes senior status may elect to continue participating in the final resolution of the case. The petition was filed prior to Judge Roth assuming senior status. Judge Roth has elected to participate in this matter.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 03-4176

RAYMOND STACEY, Individually
and as Co-Executor of the Last Will of Helen Stacey,
Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individuallyand in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE, Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity

*2 as Prothonotary of Mercer County, thru her Office, Employees and Agents
*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(WD/PA Civil No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

Submitted Under Third Circuit LAR 34.1(a) Nov. 12, 2004
Decided November 24, 2004
On Remand from the Supreme Court of the United States
Oct. 11, 2005
(Filed: April 19, 2006)
Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

OPINION OF THE COURT

PER CURIAM

**1 Raymond Stacey appeals an order of the United States District Court for the Western District of Pennsylvania dismissing a civil rights action filed by him and his mother, Helen Stacey, who is now deceased, after the City of Hermitage demolished Helen Stacey's home. On November 24, 2004, we entered a judgment affirming in part and vacating in part the District Court's order. On October 11, 2005, the United States Supreme Court vacated that judgment and remanded the case to this Court for further consideration in light of its decision in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517 (2005). Upon further consideration, we will affirm in part *3 and vacate in part the District Court's order.

Helen Stacey unsuccessfully tried to enjoin the demolition of her home in Pennsylvania state court. The opinion of the Commonwealth Court of Pennsylvania [1] reflects that in 1997, the City of Hermitage informed Stacey that her property violated the City's property maintenance code, and that the City was proceeding to have it declared a public nuisance. The following year, the City again notified Stacey that her property violated the code, and required her to remedy the violations. Stacey appealed to the City Board of Appeals. After a hearing, the Board determined that the property was an attractive nuisance, unsafe for human habitation, littered with garbage and weeds, a fire hazard and in danger of collapse. The state trial court affirmed the Board, with the exception of its finding that the property was a fire hazard. Stacey did not further appeal.

In June 2000, the City notified Stacey that the property would be demolished if she failed to cure the problems within thirty days. The City denied Raymond Stacey's request for an extension of time to complete the repairs. Helen Stacey, who executed a power of attorney naming Raymond as her legal representative, sought an injunction against the Board and the City. After a hearing, the trial court concluded that it was bound by its earlier order finding the structure unsafe, that it would be unreasonable to repair the structure, and that Helen Stacey was not entitled to a hearing before the Board because she did not timely appeal the demolition notice. On November 6, 2000, the trial court ***4** denied injunctive relief.

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[1] Stacey v. City of Hermitage Bd. of Appeals, 789 A.2d 772 (Pa. Commw. 2001).

The City demolished the structure the next day.

On appeal, the Commonwealth Court concluded that Helen Stacey was not denied a hearing on the issue of

demolition, an opportunity to repair or sell the property, or an opportunity to remove her personal items. Although the Commonwealth Court did not condone the City's haste in razing the property, it concluded that Stacey was afforded due process, noting that she received notice that the demolition would occur if repairs were not made. The Commonwealth Court stated that demolition was the appropriate remedy.

On November 6, 2002, two years after the demolition, Helen and Raymond Stacey filed a civil rights action in District Court against the City of Hermitage and various City employees, attorneys who represented the City and the Staceys throughout the state court proceedings, a utility company, a demolition company and a moving company involved in the demolition, an inspector and appraiser hired by the City, the Pennsylvania Court of Common Pleas Judge who presided over the state court action, and the Court of Common Pleas prothonotary.

****2** In their complaint, the Staceys alleged that the property was not a hazard, that there were alternatives to demolition, and that the demolition occurred without affording them due process. The Staceys also averred that in August 2000, various City employees and workmen from the utility and moving companies broke into the property, and searched and seized personal property without consent, a warrant or court order. The Staceys also alleged that in October or November 2000, City employees, and their inspectors and ***5** appraisers, searched the property without consent, warrant or court order, and that the subsequent demolition deprived them of their civil rights.

The Staceys further stated that one of their attorneys and his law firm failed to seek an injunction to prevent the demolition, and that their subsequent attorney failed to seek a continuance of the injunction hearing so that they could

present the testimony of contractors and engineers, and failed to attend the final hearing and perfect their appeal. The Staceys averred that the state court prothonotary did not process their notices of appeal, and that the state court judge was biased against them and had ex parte discussions with the City's attorney. Finally, they alleged that the City filed a lien against the property for the demolition charges without affording them procedural due process. In addition to their constitutional claims, the Staceys claimed violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), the Pennsylvania Corrupt Organizations Act, 18 Pa. Cons. Stat. § 911, and 18 Pa. Cons. Stat. § 4910, which prohibits tampering with physical evidence.

Each defendant moved to dismiss the complaint on numerous grounds, including that the District Court lacked jurisdiction under the Rooker-Feldman doctrine and that the Staceys failed to state a claim under 42 U.S.C. § 1983, RICO and the Pennsylvania statutes. The District Court granted each motion to dismiss "for all of the reasons stated ***6** therein." Dist. Ct. Order at 2. This appeal followed. [2] We have jurisdiction pursuant to 28 U.S.C. § 1291. To the extent the District Court concluded that it lacked jurisdiction under the Rooker-Feldman doctrine, our standard of review is plenary. Marran v. Marran, 376 F.3d 143, 149 (3d Cir. 2004). Our standard of review is also plenary for those claims that the District Court dismissed for failure to state a claim. Oatway v. American Int'l Group, Inc., 325 F.3d 184, 187 (3d Cir. 2003).

In our previous opinion, we concluded that the District Court lacked jurisdiction to entertain many of the Staceys' claims under the Rooker-Feldman doctrine because these claims were either actually litigated in state court or inextricably intertwined with the state adjudication. The Supreme Court, however, vacated that decision and

remanded the case to us for further consideration in light of its subsequent decision in Exxon Mobil, 125 S. Ct. 1517. Upon further consideration, we conclude that the Rooker-Feldman doctrine does not apply.

**3 In Exxon Mobil, the Supreme Court clarified the scope of the Rooker-Feldman doctrine, stating that it is confined to cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings

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[2]Shortly before the District Court granted the motions to dismiss, Helen Stacey passed away and the District Court substituted Raymond Stacey, as co-executor of Helen Stacey's will, in the place of Helen Stacey as plaintiff. Counsel has entered an appearance on behalf of Raymond Stacey and the Estate of Helen Stacey. See Shepherd v. Wellman, 313 F.3d 963, 970-71 (6th Cir. 2002) (citing Pridgen v. Andresen, 113 F.3d 391 (2d Cir. 1997)).

*7 commenced and inviting district court review and rejection of those judgments." Id. at 1521-22. The Supreme Court explained that 28 U.S.C. § 1257 vests authority to review a state court's judgment solely in the Supreme Court. Id. at 1526. However, § 1257 does not "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court" a matter previously litigated in state court. Id. at 1527. Rather, "[i]f a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ..., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion (second alteration and omission in original).'" Id.

> If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ..., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion."

Under Exxon Mobil, preclusion law may apply to the Staceys' claims, but the Rooker-Feldman doctrine is not implicated. The Staceys do not invite the District Court to review and reverse the unfavorable state-court judgment. Instead, they seek to litigate in federal court claims that may have been previously litigated in state court or are related to their earlier litigation in state court. Thus, the District Court has jurisdiction to adjudicate the Staceys' complaint.

Because the Staceys' claims are not subject to dismissal under the Rooker-Feldman doctrine, we must consider the other bases for dismissal that the defendants raised in their motions to dismiss. It was unnecessary to address many of the claims and arguments discussed below in our prior opinion in light of our conclusion that the District Court lacked jurisdiction to entertain claims related to the demolition. We now consider ***8** these arguments and, unlike the District Court, we conclude that some, but not all, of the asserted grounds for dismissal have merit.

We first address the arguments raised by the City of Hermitage and its employees (the "City defendants") in their motion to dismiss the complaint. The City defendants correctly argue that any claims against the individual City defendants in their official capacities should be dismissed because these claims are treated as claims against the City itself. See Hafer v. Malo, 502 U.S. 21, 25 (1991). The City defendants also argue that the Staceys' claims under 42 U.S.C. § 1983 are barred by the statute of limitations. We agree that the Staceys' § 1983 claims arising out of events

they allege occurred before November 6, 2000 are time-barred based upon the filing of the complaint on November 6, 2002. See Kost v. Kozakiewicz, 1 F.3d 176, 189-90 (3d Cir. 1993) (applying two-year statute of limitations to § 1983 claims). However, the Staceys' § 1983 claims arising out of the events that occurred on November 6, 2000 and thereafter are not time-barred.

**4 The City defendants correctly argue that the Staceys' procedural due process claims challenging the adequacy of the notice they received and their right to a hearing before the demolition are barred by the doctrine of issue preclusion because these issues were fully litigated in Pennsylvania state court. See Witkowski v. Welch, 173 F.3d 192, 199 (3d Cir. 1999) (setting forth requirements for application of issue preclusion).

The City defendants are also correct that Raymond Stacey has not established his standing to bring a § 1983 claim based upon a violation of property rights with respect to *9 Helen Stacey's home. See Oxford Assoc. v. Waste System Auth., 271 F.3d 140, 145-46 (3d Cir. 2001) (noting that prudential standing requires that a litigant assert his own legal interest rather than that of a third party). As noted in our previous opinion, Raymond Stacey should be afforded an opportunity on remand to amend his complaint to demonstrate standing. as to bldg or pers.prop or both

The City defendants also argue that they are entitled to immunity from liability stemming from the demolition of Helen Stacey's residence because they acted pursuant to a court order. The City defendants, however, do not identify the order that they allegedly followed or further discuss the circumstances surrounding the decision to demolish the home on November 7, 2000. We conclude that the City defendants have not shown they are entitled to immunity from liability.

The City defendants also have not established that the Staceys failed to state a claim under the Fourth Amendment. We agree that the Staceys' claims of unlawful searches and seizure of property before November 6, 2000 are time-barred.

The complaint, however, also alleges an unlawful seizure in connection with the demolition. Although the City defendants further argue that Raymond Stacey has not established that he has an interest protected by the Fourth Amendment, he alleges that he had personal property in the home, having lived there much of his life. See Soldal v. Cook County, 506 U.S. 56, 61 (1992) (noting Fourth Amendment protects property as well as privacy).

The City defendants also have not demonstrated that the Staceys failed to state a ***10** substantive due process claim because the Staceys did not assert the infringement of a fundamental right. See Sameric Corp. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998) (explaining that such a claim requires a deprivation of a protected property interest by arbitrary and capricious government action). However, we will affirm the District Court's dismissal of the Staceys' claims under the Fifth Amendment because these claims are properly considered under the Fourteenth Amendment. Kelly v. Borough of Sayreville, 107 F.3d 1073, 1076 (3d Cir. 1997). We also agree that the Staceys' claims under the Ninth Amendment were properly dismissed.

The City defendants also challenge the Staceys' claims under RICO and the Pennsylvania criminal statutes. We previously concluded that the Staceys failed to state claims under these statutes. We reaffirm that determination. See Beck v. Prupis, 529 U.S. 494, 505-06 (2000) (holding that a conspiracy claim under RICO must involve an act of racketeering or an act that is otherwise unlawful under the statute); D'Errico v. DeFazio, 763 A.2d 424, 430 (Pa. Super. 2000) (declining to imply a private right of action under

Pennsylvania Crimes Code section without an indication that the legislature contemplated such an action); Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co., 792 F.2d 341, 347 n.13 (3d Cir. 1986) (noting 18 Pa. Cons. Stat. § 911 does not provide for a private cause of action).

**5 Because the District Court granted the City defendants' motion to dismiss the complaint, it did not reach their motion for a more definite statement and motion to strike *11 any claim for punitive damages. We agree with the City defendants that the Staceys' use of the terms "plaintiffs" and "defendants" throughout the complaint makes it difficult for the City defendants to respond. On remand, Raymond Stacey must specify the parties to whom he refers with respect to the remaining claims. We also conclude that the Staceys' claims for punitive damages against the City should be stricken. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).

Finally, we stated in our prior opinion that dismissal of the Staceys' claim that the City filed a lien against the property for more than the cost of the demolition without affording procedural due process was not warranted. We reaffirm that conclusion based upon the fact that the City did not address this claim in its motion to dismiss.

We next consider the bases for the motions to dismiss the complaint filed by the non-City defendants. The Staceys alleged that the City awarded Richard Sereday and [3] Roseann Sereday, doing business as Sereday Excavating ("Sereday"), the contract to demolish their home. Sereday argues that the Staceys' § 1983 claims were properly dismissed because Sereday's conduct in performing the demolition pursuant to a contract with the City did not constitute state action. Absent any evidence of the relationship between Sereday and the City, however, lack of state action does not provide a basis

for dismissal. This argument is more appropriately raised in a motion for summary judgment,

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[3]Most of these defendants also moved to dismiss the RICO claims and claims under the Pennsylvania criminal statutes, and argued that the Rooker-Feldman doctrine applies. These arguments are addressed above.

***12** as was the case in Black by Black v. Indiana Area Sch. Dist., 985 F.2d 707 (3d Cir. 1993), which Sereday relies upon in support of its motion.

Sereday further argues that the Staceys' § 1983 claims were properly dismissed because Sereday's conduct did not cause the Staceys' alleged injuries. Sereday asserts that it had nothing to do with the determinations that the Stacey's property was a nuisance and that demolition was the appropriate remedy. We conclude, however, that it would be premature to dismiss the Staceys' § 1983 claims against Sereday at this stage of the proceedings.

The Staceys further alleged that the City hired Richard G. English & Associates ("English") and Wodzianski & Smith, Inc. ("W&S") to inspect and appraise Helen Stacey's home. The Staceys alleged that in October or November 2000, English and W&S, with the City defendants, entered and searched the Stacey home without consent, warrant or court order. English and W&S correctly argue that the Staceys' Fourth Amendment claim is barred by the two-year statute of limitations. See Kost, 1 F.3d at 189. English states that it inspected the property on October 19, 2000, prepared a report on November 2, 2000, and was prepared to testify at the November 6, 2000 hearing in state court, but was not called to do so because the Staceys did not appear. W&S also states that it inspected the property before November 6, 2000. The

Staceys did not specify in their complaint the date that English and W&S entered the property in October/November 2000. However, English correctly notes that it had to have entered *13 the property before November 6, 2000, the date of the state court hearing. The complaint was thus filed more than two years after the alleged unlawful entry and is time-barred as to this claim.[4]

**6 Similarly, the Staceys averred that in August 2000, Penn Power Company and Virostick Transfer, Inc. searched for evidence and seized personal property without consent or court order. The Staceys' claims arising out of these events are time-barred.

The Staceys also asserted legal malpractice claims against Christopher Ferry, Watts and Pepicelli, and Jerry Cartwright, their attorneys in the state court proceedings. We reaffirm our previous conclusion that, construed liberally, the complaint states claims for relief and that Stacey should be afforded an opportunity to amend the complaint to establish his standing to pursue these claims. We note that these defendants correctly argued that the Staceys do not state a claim for relief against them under § 1983, but they did not address the Staceys' allegations of malpractice in their motions to dismiss the complaint.

We also reaffirm our previous conclusion that the state court judge is immune from liability. Stump v. Sparkman, 435 U.S. 349, 356 (1978). However, in revisiting our prior conclusion that Elizabeth Fair, the state court prothonotary, is immune from liability for allegedly failing to file the Staceys' notices of appeal, we conclude that Fair has not

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[4]In light of this conclusion, we need not address the other bases for dismissal asserted by these defendants.

***14** established that she is immune from suit. However, we agree with Fair that the Staceys [5] failed to state a constitutional claim against her under § 1983.

Thus, the following claims survive the defendants' motions to dismiss: (1) claims under § 1983 against the City defendants and Sereday arising from the demolition; (2) claims under § 1983 against the City defendants arising from the imposition of the lien against the Stacey property; and (3) legal malpractice claims against the Staceys' attorneys. Accordingly, we will affirm in part and vacate in part the order of the District Court and will remand this matter for further proceedings consistent with this opinion.

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[5]In revisiting our prior conclusion, we found it unclear whether the Staceys allege that Fair acted at the court's direction. Thus, it is not clear that Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969), which held that a prothonotary was immune from suit in such a situation, applies. When judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges – that is, because they exercise a discretionary judgment as part of their function. Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 436 (1993). The duty to file a notice of appeal is non-discretionary. See Pa. R. App. Pro. 905

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-4176

RAYMOND STACEY, Individually and as Co-Executor of the Last Will of Helen Stacey, Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE, Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents

*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(WD/PA Civil No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

Submitted Under Third Circuit LAR 34.1(a) Nov. 12, 2004
Decided November 24, 2004
On Remand from the Supreme Court of the United States
Oct. 11, 2005

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered on September 22, 2003 be, and the same is, hereby affirmed in part and vacated and remanded in part. Each party shall bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: April 19, 2006
Costs taxed in favor of appellant in the amount of $300.00.

Certified as a true copy and issued in lieu of a formal mandate on 7/26/06.

Teste *Marcia M Waldron*

Clerk, U.S. Court of Appeals for the **Third Circuit**

UNREPORTED - NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 03-4176

RAYMOND STACEY, Individually
and as Co-Executor of the Last Will of Helen Stacey,
Appellant

v.

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*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(WD/PA Civil No. No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

*2 Submitted Under Third Circuit LAR 34.1(a)
November 12, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

(Filed: November 24, 2004)

OPINION OF THE COURT

PER CURIAM

Appellant Raymond Stacey, proceeding pro se, appeals an order of the United States District Court for the Western District of Pennsylvania dismissing the civil rights action filed by him and his mother, Helen Stacey, who is now deceased, after the City of Hermitage demolished Helen Stacey's home. For the reasons that follow, we will affirm in part and vacate in part the order of the District Court.

Helen Stacey unsuccessfully tried to enjoin the demolition of her home in Pennsylvania state court. In Stacey v. City of Hermitage Bd. of Appeals, 789 A.2d 772 (Pa. Commw. 2001), allocatur denied, 806 A.2d 865 (Pa. 2002), cert. denied, 538 U.S. 977 (2003), the Pennsylvania Commonwealth Court set forth the following background.

In 1997, the City of Hermitage informed Helen Stacey that her property violated the City's property maintenance code, and that the City was proceeding to have it declared a public nuisance. In 1998, the City adopted a new property maintenance code, notified Helen Stacey that her property violated the new code and required her to remedy the violations within thirty days. Helen Stacey appealed to the City of Hermitage Board *3 of Appeals which after a hearing in April 1999, determined that the property was an attractive nuisance, unsafe for human habitation, littered with garbage and uncontrolled weeds, a fire hazard and in danger of

collapse. Helen Stacey appealed, and in April 2000 the trial court affirmed the Board's determination with the exception of its finding that the property was a fire hazard. Helen Stacey did not further appeal.

The City began proceedings to have the structure demolished. In June 2000, the City notified Helen Stacey that she had thirty days to cure the problems, and that if she failed to do so, the property would be demolished. Raymond Stacey, who had put two loads of sand in the basement to remedy the property, sought an extension of time to complete the repairs. The City denied an extension of time.

In August 2000, Helen Stacey, who had executed a power of attorney naming Raymond as her legal representative, sought a temporary injunction against the Board and the City. She alleged that she was denied a hearing on the issue of demolition, that she was not notified of her right to appeal the demolition decision, and that the structure could be restored. The trial court granted a temporary injunction and held a permanent injunction hearing. The court concluded that it was bound by its earlier order declaring the structure unsafe, that it would be unreasonable to repair the structure, and that Stacey was not entitled to a hearing before the Board because she did not file a timely appeal of the notice of demolition. The trial court vacated the temporary injunction, and after Stacey filed exceptions, on November 6, 2000, entered an order affirming its prior decree.*4 On November 7, 2000, the City demolished the structure.

On appeal, the Pennsylvania Commonwealth Court concluded that Stacey could not argue that her property was not a nuisance, and that the only issue at the injunction hearing was whether demolition of the structure was the appropriate remedy. In response to Stacey' s argument that the City denied her a hearing on the issue of demolition, the Commonwealth Court also found that Stacey did not appeal the City's notice of demolition. Rather, she asked for an extension of time to make repairs. The Commonwealth Court

also rejected Stacey's argument that the City denied her an opportunity to make repairs or sell the property because Stacey was on notice as early as 1997 that her property was in violation of the City's code. Although Raymond Stacey testified at the injunction hearing that there were buyers interested in the property, the Commonwealth Court held that he did not show that he was complying with requirements for transferring property that violated the code. The Commonwealth Court also found no merit to Helen Stacey's contention that she had no opportunity to remove her personal items because Raymond testified that he was given an opportunity to do so. Although the Commonwealth Court did not condone the City's haste in razing the property, it concluded that Stacey was afforded due process because she received notice that the demolition would occur if repairs were not made. Finally, the Commonwealth Court held that demolition of the property was the appropriate remedy.

On November 6, 2002, two years after the demolition, Helen and Raymond Stacey ***5** filed the present action in District Court against the City of Hermitage and various City employees, attorneys who represented the City and the Staceys throughout the state court proceedings, a utility company, demolition company and moving company involved in the demolition, an inspector and appraiser hired by the City, Pennsylvania Court of Common Pleas Judge Thomas Dobson, who presided over the state court action, and the Court of Common Pleas prothonotary.

In their complaint, the Staceys allege that the property was not a hazard, that there were alternatives to demolition and that the demolition occurred without providing them due process. The Staceys further allege that City attorney William White denied them the opportunity to be heard on the demolition and the procedure for the inventory of items to be taken or salvaged, and that their attorney Christopher Ferry and his firm failed to seek an injunction to prevent the demolition. The Staceys also state that in August 2000, the City Police Chief, City attorney White, Commissioner James

White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order. They allege that the Police Chief dragged Raymond off of the property.

The Staceys further allege that their subsequent attorney, Jerry Cartwright, failed to get a continuance of the hearing on the permanent injunction, and they did not have the opportunity to present testimony of contractors and engineers, and that he failed to attend *6 the final hearing and perfect their notice of appeal. They also allege that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order. The Staceys further aver that the prothonotary did not process their notice of appeal of the denial of injunctive relief, and that Judge Dobson was biased against them and had ex parte discussions with the City's attorney. Finally, they allege that the City filed a lien against the property for the demolition charges without affording them procedural due process.

Based upon these allegations, the Staceys claim violations of their constitutional rights to procedural and substantive due process, their right to be free from unreasonable searches, and their right to privacy, as well as conspiracy and violations of the Racketeer Influence & Corrupt Organizations Statute, 18 U.S.C. §§ 1961 et seq. ("RICO"), the Pennsylvania Corrupt Actions Act, 18 Pa. Cons. Stat. § 911, and 18 Pa. Cons. Stat. § 4910, which relates to tampering with physical evidence.

Each defendant moved to dismiss the complaint on various grounds, including that the District Court lacked jurisdiction under the Rooker-Feldman doctrine, that there was no state action by the private defendants, and that the Staceys failed to state a claim under RICO and the Pennsylvania statutes. The District Court granted the motions

to dismiss "for all of the reasons stated [in the defendants' motions]." Dist. Ct. Order at 2. This *7 appeal followed.[1]

We have jurisdiction pursuant to 28 U.S.C. § 1291. To the extent the District Court concluded that it lacked jurisdiction under the Rooker-Feldman doctrine, our standard of review is plenary. Marran v. Marran, 376 F.3d 143, 149 (3d Cir. 2004). Our standard of review is also plenary for those claims that the District Court dismissed for failure to state a claim. Oatway v. American Int'l Group. Inc., 325 F.3d 184, 187 (3d Cir. 2003). In his brief, Raymond Stacey contends that the District Court did not specify its reasons for dismissal, and failed to show that no relief could be granted under any set of facts. He argues that the District Court failed to liberally construe his pro se complaint, and did not afford him the opportunity to amend it.

Because all of the defendants moved to dismiss the complaint based upon the Rooker-Feldman doctrine, we address this basis for dismissal first. The Rooker-Feldman doctrine precludes lower federal courts from reviewing decisions of a state tribunal. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 364 F.3d 102, 104 (3d Cir. 2004). *cert. granted o* [sic] *other grounds*, 2004 WL 1760036. Because Congress has conferred jurisdiction to review a state court's decision only on the Supreme Court, lower federal courts lack the power to decide claims in which the relief requested requires determining that the state court's decision is wrong. Id. A claim is barred by Rooker-Feldman in two *8 circumstances: first, if the claim was actually litigated in state court prior to the filing of the federal action or, second, if the claim is inextricably intertwined with the state adjudication. Id.

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[1] While the District Court proceedings were pending, Helen Stacey passed away and the District Court substituted Raymond Stacey, as co-executor of Helen Stacey's will, in the place of Helen Stacey as plaintiff.

Several of the Staceys' claims are identical to the claims upon which the Commonwealth Court of Pennsylvania reached a final judgment. The Commonwealth Court adjudicated the claims that the property was not a hazard, that there were alternatives to demolition, that the demolition occurred without due process, and that they were denied the opportunity to retrieve their personal property. Because these claims were actually litigated in state court, the District Court had no jurisdiction to entertain them. See id. at 106.

Some of the Staceys' other claims are inextricably intertwined with the state adjudication. A federal action is inextricably intertwined "where federal relief can only be predicated upon a conviction that the state court was wrong." Parkview Assoc. P'ship v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (citations omitted). Applying this definition, the Staceys' claim that in August 2000 the City Police Chief, City attorney White, Commissioner James White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order - and claim that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order - are inextricably ***9** intertwined with the Commonwealth Court's decision. The alleged acts were incident to the demolition, and relief on these claims can only be predicated upon a conviction that the state court wrongly decided that the City could demolish the property.

Some of the Staceys' claims were not actually litigated in state court, and are not inextricably intertwined with the Commonwealth Court's decision, but were properly dismissed on other grounds. The Staceys do not state a claim upon which relief can be granted under RICO. See Beck v. Prupis, 529 U.S. 494, 505 (2000) (holding that a conspiracy claim under RICO must involve an act of racketeering or an act that is otherwise unlawful under the statute). In addition,

18 Pa. Cons. Stat. § 911 does not provide for a private cause of action. Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co., 792 F.2d 341, 347 n.13 (3d Cir. 1986), aff'd, 483 U.S. 143 (1987). Similarly, 18 Pa. Cons. Stat. § 4910, a criminal statute prohibiting the tampering or fabrication of physical evidence, does not provide for a private cause of action. Finally, the state court judge is immune from liability, Stump v. Sparkman, 435 U.S. 349, 357 (1978), as is the state court prothonotary. See Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969) (holding that a prothonotary acting at the direction of the court was immune from suit).

Construed liberally, the complaint also contains claims of legal malpractice against the Staceys' attorneys, and these claims should not have been dismissed. Although neither attorney addresses these claims in his brief to this Court, the District Court appears to have diversity jurisdiction over them, and the Staceys' allegations are *10 sufficient to state a claim. See Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 616-17 (3d Cir. 1991) (setting forth elements of legal malpractice claim under Pennsylvania law).

Finally, the Staceys also alleged that the City filed a lien against the property for more than the cost of the demolition without affording procedural due process on whether the lien should be assessed and whether the amount was proper. The City does not address this claim in its brief, and it is not clear that it is time-barred or that the Staceys do not state a claim upon which relief may be granted. See Connecticut v. Doehr, 501 U.S. 1, 12 (1991) (stating that the temporary or partial impairments to property rights that liens entail are sufficient to merit due process protection). In addition, the only issues in the state court proceedings were the Staceys' challenges to the demolition. The City does not argue, nor is it clear, that the doctrine of claim preclusion bars this claim. See McNasby v. Crown Cork and Seal Co., Inc., 888 F.2d 270, 275-76 (3d Cir. 1989) (setting forth requirements for

application of claim preclusion doctrine). We conclude that the District Court should not have dismissed this claim.[2]

*11 Accordingly, we will affirm in part and vacate in part the order of the District Court. The matter will be remanded for further proceedings consistent with this opinion.

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[2] We note that attorney Jerry Cartwright and the City defendants challenge Raymond Stacey's standing to maintain this action because he does not own the property at issue, and he did not plead that he resided there at the time of the acts alleged in the complaint. In addition, Cartwright and attorney Christopher Ferry state that they only represented Helen Stacey. In light of his pro se status, Raymond Stacey should be afforded an opportunity to amend the complaint to include allegations establishing his standing to sue in his own right. We further note that Raymond Stacey may not proceed pro se on behalf of Helen Stacey's estate if the estate has other beneficiaries or creditors. See Shepherd v. Wellman, 313 F.3d 963, 970-71 (6th Cir. 2002) (citing Pridgen v. Andresen, 113 F.3d 391, 393 (2d Cir. 1997)).

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered on September 22, 2003 be, and the same is, hereby affirmed in part and vacated and remanded in part. Each party shall bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST

/s/ Marcia M. Waldron
Clerk

Dated: November 24, 2004

Certified as a true copy and issued in lieu of a formal mandate on 05/19/05

s/ Marcia M. Waldron
Teste:
Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HELEN STACEY 2220 High St Apt 611 Cuyahoga Falls, OH 44221	:	Civil Action No. 02 1911
and	:	COMPLAINT FOR DECLARATORY
RAYMOND STACEY 123 Hickory Ln SW Warren OH 44481	:	AND INJUNCTIVE RELIEF AND FOR DAMAGES
Plaintiffs	:	Jury Demand Endorsed Hereon
vs	:	
CITY OF HERMITAGE 800 N Hermitage Rd Hermitage PA 16148	:	
GARY P HINKSON, Individually and in Official Capacity as City Manager of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	
EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	
RUSSELL V PENN JR, Individually and in Official Capacity as City Inspector of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	

JEFFERY OSBORNE, Individually :
and in Official Capacity as :
Asst City Inspector of Hermitage :
800 N Hermitage Rd :
Hermitage PA 16148 :
:
ROBERT S GOELTZ, Individually :
and in Official Capacity as :
Fire Marshall of Hermitage, :
800 N Hermitage Rd :
Hermitage PA 16148 :
:
JAMES "PAT" WHITE, Individually: :
and in Official Capacity as :
Commissioner of Hermitage, :
490 Ashland Dr :
Hermitage, PA 16148 :
:
THOMAS W KUSTER, and :
H WILLIAM WHITE III, and :
EKKER KUSTER MCCONNELL :
& EPSTEIN :
Attorneys at Law, Individually :
and in Official Capacity as :
Solicitors for Hermitage, :
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P0 Box 91 :
Sharon PA 16146 :
:
CHRISTOPHER FERRY, and :
WATTS & PEPICELLI :
Attorneys at Law :
916 Diamond Park :
Meadville PA 16335 :
:
JERRY G CARTWRIGHT JR :
Attorney at Law :
Temple Bldg, Suite 214 :
125 E North St :
New Castle PA 16101 :

PENN POWER CO, and :
OHIO EDISON CO, thru :
its Employees and Agents, :
1 East Washington St :
New Castle PA 16101 :
:
RICHARD SEREDAY, and :
ROSEANN SEREDAY, :
doing business as :
SEREDAY EXCAVATING, :
694 Yankee Run Rd :
Masury, OH 44438 :
:
VIROSTICK TRANSFER CO, thru :
its Owners, Employees and Agents, :
159 Pitt St :
Sharon PA 16146 :
:
WODZIANSKI & SMITH INC, thru :
its Owners, Employees and Agents, :
Address unknown :
:
RICHARD G ENGLISH & ASSOC, :
thru Its Owners, Employees :
and Agents, :
191 Connelly Blvd :
Sharon PA 16146 :

*2

THOMAS R DOBSON, :
Individually and in Official :
Capacity as Common Pleas :
Judge of Mercer County, :
Mercer County Courthouse :
North Diamond St :
Mercer PA 16137 :

ELIZABETH F FAIR, :
Individually and in Official :
Capacity as Prothonotary :
of Mercer County, thru :
Her Office, Employees and Agents, :
Mercer County Courthouse :
North Diamond St :
Mercer PA 16137 :
:
Defendants :

JURISDICTION

1. This Court has jurisdiction under 28 USC §§ 1331 and 1343, and 1332, if necessary, and 18 USC §§ 1964 and 1965, if conspiracy is deemed appropriate. This action flows primarily from 42 USC § 1983 and seeks to redress deprivation under color of state law of rights secured to plaintiffs by the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction over state claims pursuant to 28 USC § 1367. Jurisdiction is further conferred by 28 USC §§ 2201 and 2202 for declaratory and injunctive relief.

PARTIES

2. Plaintiff Helen Stacey is a citizen of the United States and owner of the property at 1560 East State Street in the City of Hermitage, Mercer County, Pennsylvania. She resided there until July 1, 1997, when she and her husband, Andrew, now deceased, were *3 ordered to vacate the family home by defendant City of Hermitage after a heavy rain flooded the cellar. She now lives at 2220 High St, Apt 611, Cuyahoga Falls, Summit County, Ohio.

3. Plaintiff Raymond Stacey is a citizen of the United States, the son of Helen Stacey and her attorney-in-fact. For most of his live he lived at the family home, but now resides at 123 Hickory Lane SW, Warren, Trumbull County, Ohio.

4. Defendant City of Hermitage (City) is a municipal government organized and operating under the laws of Pennsylvania and is located in Mercer County, Pennsylvania.

5. Defendant Gary P Hinkson is the City Manager of Hermitage responsible for the day-to-day operation, decisions and business of the City. At the time of the occurrences alleged herein, it was his duty to supervise city activities so as not to injure plaintiffs or deprive them of their civil rights.

6. Defendant Edward Stanton is the chief police officer of Hermitage responsible for the police department and as such it was his duty to supervise police activities so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

7. Defendant Russell V Penn Jr is City Inspector and Health Officer of Hermitage responsible for enforcing the provisions of the City Property Maintenance Code and as such conducts housing inspections and issues notices and orders for violations of the Code. At the time of the occurrences alleged herein, it was his duty not to injure plaintiffs or deprive them of their civil rights.

*4

8. Defendant Jeffery Osborne is a city inspector who assists defendant Penn in housing inspections within the City, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

9. Defendant Robert S Goeltz is Fire Marshall of Hermitage and responsible for the operation of the City fire department. At the time of the occurrences alleged herein, it was his duty to supervise fire department activities so as not to cause injuries to plaintiffs or deprive them of their civil rights.

10. Defendant James "Pat" White is an elected commissioner of the City of Hermitage responsible for legislative functions and activities, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

11. Defendants Thomas W Kuster and H William White III are attorneys with the defendant firm of Ekker, Kuster, McConnell & Epstein of Sharon, Pennsylvania. They are solicitors for the City of Hermitage and responsible f or legal advice and services. As such, it was their duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

12. Defendant Christopher Ferry is an attorney with defendant firm Watts & Pepicelli of Meadville, Pennsylvania. They were retained by plaintiff Helen Stacey to handle problems with Hermitage over building code violations with the family home and to help sell the property. As such, the attorneys had a duty not to injure plaintiffs or deprive them of their civil rights at the ***5** time of the occurrences alleged herein.

13. Defendant Jerry G Cartwright Jr is an attorney in private practice in New Castle, Pennsylvania. When defendants Ferry and his law firm failed to act in filing a trespass action and getting an injunction against Hermitage, plaintiffs retained Attorney Cartwright to get the injunction and petition the court to order the City to hold a hearing before the City appeals board. As such, Attorney Cartwright had a duty not to injure plaintiffs or deprive them of their civil rights.

14. Defendants Penn Power Company and its parent organization Ohio Edison are electric power utility companies. Penn Power maintains offices in New Castle, Pennsylvania, and is regulated by the Pennsylvania Public Utility Commission. As such, Penn Power had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive plaintiffs of their civil rights at the time of the occurrences alleged herein.

15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

16. Defendant Virostick Transfer Company is a moving company with offices in Sharon, Pennsylvania, and is regulated by the *6 Pennsylvania Public Utility Commission. As such, its owners had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

17. Defendant Wodzianski & Smith of an unknown address and defendant Richard G English & Associates of Sharon, Pennsylvania, were hired in October/November 2000 by the City of Hermitage to inspect and appraise plaintiffs family home. As such, these defendants had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

18. Defendant Thomas R Dobson is a judge of the Court of Common Pleas in Mercer County, Pennsylvania, and as

such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

19. Defendant Elizabeth F Fair is the prothonotary of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was her duty to supervise the activities of her office, employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

FACTS

20. Helen Stacey was the owner of a large brick building, (the family home), located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts and family photos.

*7

21. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

22. The City demolished the structure located at 1560 East State Street and in doing so knowingly destroyed evidence so it was not available for any official proceeding.

23. The structure was not a hazard to life, health or safety, and not about to collapse, having withstood the heavy snows of three winters and one earthquake.

24. There were alternatives to demolition, including buyers willing to make repairs acceptable to the City.

25. The City demolition occurred without providing plaintiffs with due process.

26. The City letter of 6/1/2000 sent to plaintiff contains no warning that the City will demolish the home if repairs are not made and does not advise of the right to appeal.

27. Plaintiffs placed three truckloads of dirt into the cellar of the structure to support the foundation, but the City ignored plaintiffs request for an extension of time to continue the repairs.

28. Plaintiffs requested a hearing at the City board of appeals from the demolition notice of 8/1/2000 to consider repairs in progress, the sale of the property to a buyer willing to make the repairs, and time to remove vast amounts of personal property from the family home.

29. Defendant Attorney White summarily refused to convene the City board, denying plaintiffs the opportunity to be heard on ***8** the demolition itself and the procedure for inventory of items to be taken or salvaged, as required by City ordinance.

30. Plaintiffs asked defendants Ferry and his firm to file an action in trespass and get an injunction to prevent the demolition. When they failed to act, plaintiffs in a panic rush retained defendant Attorney Cartwright.

31. On August 28 and August 31, 2000, defendants Police Chief Stanton, City Attorney White, Commissioner White, Inspectors Penn and Osborne, workmen from Penn Power and from Virostick Transfer Co, in concert with others, broke in, searched for evidence and seized personal property without consent, warrant or court order. At one point, Police Chief Stanton reached through the open front door, grabbed and dragged plaintiff Raymond Stacey outside, threatening him with arrest for defiant trespass if he again interfered.

32. City Defendants were continuing a pattern of threat and violence going back two years when they boarded up the home to keep the family and its contractor out, and took the family pickup truck still in running order to a secret place, while ordering the buyer of the truck off the property with threats of arrest.

33. Plaintiffs [Helen Stacey was] issued •a temporary injunction preventing demolition at the cost of a $50,000 bond in favor of the City.

34. The temporary injunction was vacated a few days later by defendant Judge Dobson after a hearing where plaintiffs [Helen Stacey] did not have the opportunity to present testimony of contractors and engineers, together with their reports, because plaintiffs Attorney Cartwright failed to ask for and get a continuance.

*9

35. Plaintiff Helen Stacey, through Attorney Cartwright, filed an immediate notice of appeal which by fraud or bad faith in the Mercer County court system on the part of defendants Judge Dobson and Prothonotary Fair, was not docketed or processed per the Pennsylvania Rules of Appellate Procedure, and Plaintiff's motion for appellate stay was rejected despite the fact her $50,000 trial bond was still active in favor of the City.

36. In October or November 2000, upon information and belief, defendants Wodzianski & Smith Inc and Richard G English & Associates, through its owners, employees and agents, together with City defendants and unknown members of the City Fire Department entered and searched the Stacey home without consent, warrant or court order.

37. On November 6, 2000, the City seized the property with force by entering the family home without plaintiffs'

consent, using heavy equipment to demolish the structure and removing material from the premises.

38. While plaintiff's [Helen Stacey's] case was still pending in the state court system, the City in demolishing the family home destroyed the structure and its contents as evidence so it would not be available for further proceedings, such destruction being in violation of the Pennsylvania Crimes Code 4910.

39. Defendant Cartwright as plaintiff's attorney failed to attend the final hearing on November 6, 2000. He failed to perfect plaintiff's notice of appeal of 9/7/2000 and failed to secure an appellate stay to protect plaintiff's home.

***10**

40. Defendant Judge Dobson was not impartial and showed bias against plaintiffs. He threatened [federal] plaintiff Raymond Stacey with jail for zealously pursuing the truth at [the state] trial. The judge prevented the processing of plaintiff's [Helen Stacey's] notice of appeal of 9/7/2000 when the temporary injunction was vacated by the decree nisi which changed the status quo between the parties and is appealable as of right under Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure. The judge had discussions about the case with the City's attorney outside the presence of plaintiff or plaintiff's attorney.

41. On November 6, 2000, when the final decree was entered on the docket, defendants Judge Dobson and Protonotary Fair made no effort to have plaintiff's [Helen Stacey's] notice of appeal processed as required by Rule 905 of the Rules of Appellate Procedure:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date...which date shall be shown on the docket...A notice of appeal filed...before the entry of an appealable order shall be

> treated as filed after such entry and on the day thereof.
>
> * * *
>
> The clerk shall immediately transmit to...the appellate court...a copy of the notice of appeal showing the date of receipt

42. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos.

43. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

*11

44. The City has filed a written lien on the property at 1560 East State Street for more than the amount of the demolition cost.

45. The City filed the lien for more than the cost of demolition without providing plaintiffs the opportunity for a due process hearing on whether the lien should be assessed and whether the amount of the lien was proper.

46. The City's imposition of the lien for demolition costs on the property clouds the title to the property.

47. The City is a corrupt organization and in doing the acts and things complained of the defendants were conspirators engaged in a scheme and conspiracy designed and intended to, and in fact did deny and deprive plaintiffs of Constitutional rights.

[No para. 48]

49. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild the nonconforming structure.

50. Defendant City of Hermitage is a corrupt organization and with other defendants created a conspiracy that should be investigated under the Pennsylvania Crimes Code 18 Pa.CS § 911 and the federal RICO Act 18 USC § 1961 et seq. In furtherance of the conspiracy, defendants have carried on interstate activity by ***12** using the United States mails and telephone service, and plaintiffs have been damaged thereby.

51. Defendants acted intentionally, maliciously, recklessly and with a callous indifference to the rights of each of the plaintiffs.

CLAIMS FOR RELIEF

52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

53. By entering with force and searching plaintiffs home without warrants and without consent, defendants, acting under color of state law, have violated plaintiffs right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

54. By entering with force and searching plaintiffs home without warrants and without consent, and forcibly seizing plaintiffs home without adequate due process of law, defendants acting under color of state law, have violated plaintiffs right to privacy under the Fourth, Fifth and Ninth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

*13

55. Defendants actions, performed under color of state law, including, but not limited to, entering with force, searching and seizing plaintiffs home, and the breakdown of the Mercer County court system, under false pretenses and without warrants or consent when no emergency existed, were arbitrary and unreasonable, without substantial relation to public health, safety or public welfare, and as such violated plaintiffs right to substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

56. In doing the acts and things complained of above, the defendants were conspirators engaged in a scheme and conspiracy designed, intended to, and which in fact did, deny and deprive plaintiffs of rights guaranteed under the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, and 18 USC §§ 1961 et seq and the Pennsylvania Crimes Code 18 Pa.CS Sec. 911.

57. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild, the nonconforming structure.

58. The City of Hermitage's unilateral determination of the demolition charges and imposition of a lien against plaintiff Helen Stacey's property for the collection of the charges injured *14 plaintiff by impairing title to the property. The City's failure to provide plaintiff with a due process hearing prior to the assessment of the charges and the imposition of the lien on her real property to secure the payment of those charges violated the due process requirement of the Fifth and Fourteenth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray this Court grant the following relief:

Enter judgment declaring that plaintiff Helen Stacey was entitled to an appeal as of right from the decree nisi issued in her state court case pursuant to Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure.

Enter an injunction prohibiting the foreclosure of the City's lien on plaintiff's property, ordering the City to remove the lien for demolition charges from all public records.

Enter judgment for the plaintiffs against defendants for compensatory and punitive damages in the amount of $2,000,000.00

Enter an order that defendants pay court costs and attorneys' fees in this action pursuant to 42 § 1988.

Grant such other relief as the Court deems just and proper.

Respectfully submitted,

s/ Helen Stacey

1-21-2003

Date: November 6, 2002

Helen Stacey
BY s/ Raymond Stacey

Helen Stacey, PRO SE Plaintiff
2220 High St Apt 611
Cuyahoga Falls, OH 44221
Tel 330.926.9155
By Raymond Stacey
Her Attorney in Fact

s/ Raymond Stacey

Raymond Stacey, PRO SE Plaintiff
123 Hickory Ln SW
Warren OH 44481
Tel 330.652.6063

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

RAYMOND STACEY,	)	
Individually and as Co-Executor	)	
of the Last Will of Helen Stacey,	)	**2:02-cv-1911**
123 Hickory Lane SW	)	
Warren, OH 44481,	)	**AMENDED**
Plaintiff,	)	**COMPLAINT**
v.	)	
	)	**Jury**
CITY OF HERMITAGE	)	**Demand**
800 N. Hermitage Rd	)	**Endorsed**
Hermitage, PA 16148;	)	**Hereon**
	)	
GARY P. HINKSON, Individually as	)	
City Manager of Hermitage,	)	
800 N. Hermitage Rd	)	
Hermitage, PA 16148;	)	
	)	
EDWARD STANTON, Individually	)	
as Police Chief of Hermitage,	)	
800 N. Hermitage Rd	)	
Hermitage, PA 16148;	)	
	)	
RUSSELL V. PENN JR,	)	
Individually as City Inspector of	)	
Hermitage,	)	
800 N. Hermitage Rd	)	
Hermitage, PA 16148;	)	
	)	
JEFFERY OSBORNE, Individually	)	
as Asst City Inspector of Hermitage	)	
800 N. Hermitage Rd	)	
Hermitage, PA 16148;	)	
	)	
ROBERT S. GOELTZ, Individually	)	

as Fire Marshall of Hermitage,
800 N. Hermitage Rd
Hermitage, PA 16148;

JAMES "PAT" WHITE,
Individually as Commissioner of
Hermitage,
490 Ashland Dr
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THOMAS W. KUSTER, and
H WILLIAM WHITE III, and
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JERRY G. CARTWRIGHT JR.,
Attorney at Law,
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Ellwood City, PA 16117

PENN POWER CO, and
OHIO EDISON CO, thru
its Employees and Agents,
1 East Washington St
New Castle, PA 16101;

RICHARD SEREDAY, and
ROSEANN SEREDAY,
doing business as
SEREDAY EXCAVATING,
694 Yankee Run Rd NE
Masury, OH 44438;

VIROSTICK TRANSFER CO, thru
its Owners, Employees and Agents,
159 Pitt St
Sharon, PA 16146;

WODZIANSKI & SMITH INC, thru
its Owners, Employees and Agents,
c/o Atty. Keith M. Pemrick
1030 Liberty Street
Franklin, PA 16323;

RICHARD G. ENGLISH & ASSOC, thru Its Owners, Employees and Agents, 191 Connelly Blvd Sharon, PA 16146;

THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County, Mercer County Courthouse North Diamond St Mercer, PA 16137;

ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru Her Office, Employees and Agents, Mercer County Courthouse North Diamond St Mercer, PA 16137;

Defendants.

AMENDED COMPLAINT
JURISDICTION

1. The Court has jurisdiction under 28 U.S.C. §§ 1331, 1332 and 1343. This action flows primarily from 42 U.S.C. § 1983 and seeks to redress deprivation under color of state law of rights secured to plaintiffs by the First, Fourth and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction over state claims pursuant to 28 U.S.C. § 1367. Jurisdiction is further conferred by 28 U.S.C. §§ 2201 and 2202 for declaratory and injunctive relief.

SUMMARY OF NOVEMBER 6, 2000

2. On November 6, 2000, in the City of Hermitage, Pennsylvania, under authority of its property maintenance code, the Defendant City of Hermitage in concert with Defendants Atty. White, Penn, Osborne and the Seredays, trespassed on the Stacey property located at 1560 East State Street, and without consent, warrant or court order in violation of state law and in violation of the First, Fourth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983, did the following:

(a) Seized and destroyed ***the Stacey building*** at 1560 East State Street, which was the "family home" ***owned by Plaintiff Helen Stacey***, now deceased. These Defendants caused her damages of over $200,000 in costs to rebuild and years of lost memories.

(b) Seized and destroyed ***personal property of Helen Stacey*** which was inside the family home when it was destroyed. These Defendants caused her additional damages of thousands of dollars and more years of lost memories.

(c) Seized and destroyed ***personal property of Plaintiff Raymond Stacey*** which was inside the family home when it was destroyed by these Defendants. They caused him damages in thousands of dollars and years of lost memories. Raymond had a room in the family home, and stored and used his personal property throughout the building until his belongings were seized and destroyed by these Defendants on November 6, 2000.

(d) With the destruction of the real and personal property of Helen and Raymond Stacey, these Defendants ***destroyed the legal claims for injunctive relief and denied access to the courts*** for both Helen and Raymond Stacey in violation of state law and in violation of the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

3. The seizure and destruction of the Staceys' property on November 6, 2000, was the last act of a civil conspiracy to demolish the Stacey building. This civil conspiracy was formed by the City in July 2000, and was joined by Defendants Hinkson, Atty. White, Penn, Osborne, and the Seredays who were willing participants and agreed with the City to seize and destroy the Stacey building, which was a nonconforming structure under the City's zoning code. Plaintiffs Helen and Raymond Stacey notified the City and the Seredays by letter that they would be trespassing if they entered the Stacey property without a warrant or court order.

The City conspiracy grew in August and September 2000 when it was joined by Defendants Stanton, Goeltz, "Pat" White, Atty. Kuster and his law firm, Atty. Ferry and his law firm, Penn Power and Ohio Edison, Virostick Transfer, and Judge Dobson. Each of these Defendants was a willing participant with the City and acted

in furtherance of the City's plan to demolish the Stacey home.

In October 2000, the conspiracy was further joined by Defendants English and Wodzianski & Smith. They were willing participants with the City and acted in furtherance of the City's plan to demolish the Stacey building. They appeared in state court on November 6, 2000, to be witnesses for the City to stop Helen Stacey from maintaining an injunction against demolition of the family home.

The concerted actions of these Defendants (the "demolition" Defendants) as co-conspirators injured both Helen Stacey and Raymond Stacey, and culminated on November 6, 2000, with the total destruction of the real and personal properties of the Staceys in violation of state law and the First, Fourth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

4. On November 6, 2000, Defendant Fair failed to process the notice of appeal that Helen Stacey had filed September 7, 2000, through her attorney, Defendant Cartwright. Prothonotary Fair's failure to perfect that appeal was the last act of a conspiracy that involved the City of Hermitage, its solicitor Defendant Atty. White, and the Defendants Dobson, Fair and Cartwright (the "court" Defendants).

Atty. White had several ex parte meetings with Judge Dobson. Plaintiff Helen Stacey wanted an immediate appeal on September 7, 2000, from the judge's order that dissolved the injunction protecting the family home from demolition. Pennsylvania Rule of Appellate Procedure 311(a)(4)(ii) allows an immediate appeal from a dissolved injunction. Atty. Cartwright in a letter to Plaintiff Raymond Stacey wrote that "the Judge thought that issue he ordered was non-appealable." On the record in state court, the judge stated "the order entered on September 5, 2000, is interlocutory," i.e., non-appealable. The judge was not authorized by law to deny or frustrate Helen Stacey's notice

of appeal, but he did prevent her from perfecting it. This was improper and beyond the scope of his authority. Appeals in Pennsylvania are in the exclusive jurisdiction of the appellate courts. Under 42 Pa.C.S.A. § 762, Commonwealth Court of Pennsylvania "shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas" in civil actions.

Despite a legal duty under Pennsylvania Rule of Appellate Procedure 905, Prothonotary Fair refused to docket and process the appeal on September 7 when it was first filed. Fair again failed to docket and process the appeal on November 6, 2000, when the judge's final order was entered.

After consulting with the prothonotary, Atty. Cartwright did not notify the Staceys that he was not pushing for an immediate appeal. Cartwright did not show up for the final hearing on the injunction on November 6, 2000, to perfect an immediate appeal for his client Helen Stacey.

The actions of these Defendants as co-conspirators injured the Staceys with the immediate destruction of the properties of both Helen and Raymond Stacey on November 6, 2000, and caused the denial for Helen Stacey of immediate access to the appellate courts of Pennsylvania in violation of state law and in violation of the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

THE PARTIES

5. Helen Stacey, whose estate is represented here and at all times relevant to the claims herein, was a citizen of the United States and owner of the building ("family home") and land at 1560 East State Street in the City of Hermitage, Mercer County, Pennsylvania. She resided there from the early 1940s until July 1, 1997, when she and her husband, Andrew, were ordered to vacate the family home by defendant City of Hermitage (the City) after a heavy rain flooded the cellar. Helen then lived at 2220 High St, Apt 611, Cuyahoga Falls, Summit County, Ohio, until her death on

May 2, 2003, at age 93. Her husband, Andrew, died at 91 in January 1998, seven months after being forced out of the family home by the City.

6. Plaintiff Raymond Stacey is a citizen of the United States and the son of Andrew and Helen Stacey. He was their agent from July 1997 until his mother's death in May 2003. Raymond resides at 123 Hickory Lane SW, Warren, Trumbull County, Ohio, but lived at the family home from the early 1940s until he joined the U.S. Army in 1961. Thereafter he stayed sporadically at the family home. With his parents' permission, he had a room there of his own and access to the whole building where he could work and store personal property he had accumulated there over many years. On November 6, 2000, the City destroyed the building and all of his personal property that was still located there.

In July 1997, when his parents were forced by the City to leave the family home, they gave Raymond all the keys to the building and made him caretaker of the property at 1560 East State Street until the Stacey family home was destroyed by the City on November 6, 2000.

7. The value of all the property destroyed was in excess of $75,000.

8. Defendant City of Hermitage (City) is a charter municipal government organized and operating under the laws of Pennsylvania and is located in Mercer County, Pennsylvania. Pursuant to its Property Maintenance Code ("Code"), the City formed a conspiracy involving City personnel and agents and other non-City Defendants described below who agreed to the seizure of the real and personal property of the Staceys and finally to its destruction on November 6, 2000, without a warrant or court order or notice to the Staceys. The City later filed a lien against the Stacey land at 1560 East State Street for more than the actual cost of the demolition without notice or hearing or accounting as required by the City Code.

Defendants English & Associates, Wodzianski & Smith, Penn Power and Ohio Edison, and Virostick Transfer

joined as willing participants in a civil conspiracy with the City and its agents (the City Defendants) to seize and demolish the Stacey building and conspired to deprive Helen Stacey and Raymond Stacey of their interest in property without due process of law. The Defendants named in this paragraph conspired to deprive the Staceys of their right to be free from arbitrary and unreasonable searches, seizures and destruction of the real property and the personal properties of Helen Stacey and Raymond Stacey on November 6, 2000. These Defendants further conspired to deprive Raymond Stacey of his interest in private property he kept in the family home, where he had a room and where he stored and used his valuable personal property for many years until these Defendants destroyed the family home along with his property on November 6, 2000.

The City hired Defendants English & Associates and Wodzianski & Smith to inspect and appraise the Stacey family home. They prepared reports to be submitted as evidence by the City at the final hearing of November 6, 2000, and were willing participants as co-conspirators with the City in bringing about the seizure and total destruction of the Stacey home and properties by the City that same day.

Defendants Penn Power and Ohio Edison were co-conspirators and willing participants with the City in bringing about the last act of the conspiracy with the seizure and destructions of the Staceys' real and personal property on November 6, 2000. At the request of the City, Ohio Edison gave the OK, and Penn Power trespassed and entered the family home without consent or court order to disconnect electric power to the Stacey home in violation of the U.S. Constitution, state regulations and the contract Penn Power had with Helen Stacey (statute of limitations on contracts in Pennsylvania is four years). Penn Power refused to return electric power to the Stacey home with the result that the Staceys could not continue fixing the structure nor remove any belongings, and the ultimate result that the Stacey building and personal property were destroyed by the City on

November 6, 2000. Penn Power and Ohio Edison as co-conspirators with the City deprived the Staceys of their rights to privacy, rights to freedom from unreasonable search and seizure, right to due process of law, and right of access to the courts. Penn Power's unlawful entry into the Stacey home deprived Helen and Raymond Stacey of their interest in property without due process of law.

The last overt act of the conspiracy took place when the Stacey home was demolished or seized by the City defendants, who entered the home and destroyed the private property of Raymond Stacey and the real and private property of Helen Stacey, on November 6, 2000.

These private Defendants (Ohio Edison and Penn Power, the Seredays, Virostick Transfer, Judge Dobson and Prothonotary Fair) were willing participants with the City Defendants, and they all reached a mutual understanding to deprive the Staceys of their Constitutional rights and interest in property without substantive due process. These Defendants also reached an understanding and agreement to infringe upon the plaintiffs' rights to privacy, rights to freedom from unreasonable searches and seizures, and rights of access to the courts.

With the destruction of the Staceys' personal property and real property, the condition of which was a critical issue in future judicial proceedings, the City Defendants destroyed evidence in an ongoing case in violation of state criminal law and in violation of the Plaintiffs' First Amendment right of access to the courts.

The private Defendants willingly participated with the City's agents and reached an agreement concerning the unlawful objective to deprive the Plaintiffs of their First Amendment right of access to the courts. Illegal entry into the Stacey home, destruction of private property, and seizure of realty were overt acts done in furtherance of the goal of violating the Plaintiffs' constitutional rights, and ***furtherance of this goal injured the Plaintiffs***. The Plaintiffs were thus deprived of rights, privileges, and immunities secured by the

Constitution and by the federal courts. The private defendants and the government defendants in this case acted in concert to inflict unconstitutional injuries and overt acts done in furtherance of that goal, causing damage to the Staceys. These same private and government defendants conspired to impede, hinder, obstruct and defeat the due course of justice in the state courts through a concerted attempt to make it impossible for Helen Stacey to challenge by appeal the lower state court order dissolving the injunction that prevented the demolition of the Stacey building by the City of Hermitage.

9. Gary P. Hinkson at all times relevant to the claims herein was the City Manager of Hermitage responsible for the day-to-day operation, decisions and business of the City. It was his duty to supervise city activities so as not to injure plaintiffs or deprive them of their civil rights.

10. Edward Stanton at all times relevant to the claims herein was the chief police officer of Hermitage responsible for the police department and as such it was his duty to supervise police activities so as not to cause injuries to plaintiffs or deprive them of their civil rights.

11. Russell V. Penn Jr. at all times relevant to the claims herein was City Inspector and Health Officer of Hermitage responsible for enforcing the provisions of the City Property Maintenance Code and as such conducts housing inspections and issues notices and orders for violations of the Code. It was his duty not to injure plaintiffs or deprive them of their civil rights.

12. Jeffery Osborne at all times relevant to the claims herein was a city inspector who assisted building inspector Penn in housing inspections within the City, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights.

13. Robert S. Goeltz at all times relevant to the claims herein was Fire Marshall of Hermitage and responsible for the operation of the City fire department. It was his duty to supervise fire department activities so as not to cause injuries to plaintiffs or deprive them of their civil rights.

14. James "Pat" White at all times relevant to the claims herein was an elected commissioner of the City of Hermitage responsible for legislative functions and activities, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights.

15. Thomas W. Kuster and H. William White III at all times relevant to the claims herein were attorneys with the law firm of Ekker, Kuster, McConnell & Epstein of Sharon, Pennsylvania. They were solicitors for the City of Hermitage and responsible for legal advice and services. As such, it was their duty not to injure plaintiffs or deprive them of their civil rights.

16. Defendant Christopher Ferry at all times relevant to the claims herein was an attorney with defendant law firm Watts & Pepicelli of Meadville, Pennsylvania. They were retained by plaintiff Helen Stacey to handle problems with Hermitage over building code violations with the family home and to help sell the property. As such, they had a duty not to injure her or deprive her of her civil rights. These Defendants breached their contractual obligations to Helen Stacey and injured her when they (1) refused to file an action in trespass against the City of Hermitage, (2) refused to seek an injunction to stop the City from demolishing the family home, and (3) failed to provide assistance in selling the Stacey real estate. Statute of limitations on contracts in Pennsylvania is four years.

17. Defendant Jerry G. Cartwright Jr. at all times relevant to the claims herein was an attorney in private practice in New Castle, Pennsylvania. When defendants Ferry and the Watts & Pepecilli law firm failed to act in filing a trespass action and getting an injunction against Hermitage, plaintiffs ed Attorney Cartwright to get the injunction and petition the court to order the City to hold a hearing before the City appeals board. As such, Attorney Cartwright had a duty not to injure plaintiffs or deprive them of their civil rights. This Defendant breached his contractual obligations to the Plaintiffs and injured them (1) by failing to get an

immediate appeal of Judge Dobson's order denying the injunction to prevent the City of Hermitage from demolishing the Stacey home, and (2) by failing to appear on November 6, 2000, at the final hearing on the injunction in order to protect Plaintiffs' real and personal property interests. Statute of limitations on contracts in Pennsylvania is four years.

18. Penn Power Company and its parent organization Ohio Edison are electric power utility companies. Penn Power maintains offices in New Castle, Pennsylvania, and is regulated by the Pennsylvania Public Utility Commission. As such, Penn Power had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive plaintiffs of their civil rights.

19. Richard Sereday and Roseann Sereday, at all times relevant to the claims herein, did business as Sereday Excavating and ran a building demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them a contract to demolish plaintiffs' family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights. In the afternoon of November 6, 2000, the Seredays with complicit help from the City trespassed and seized and destroyed the Stacey family home and all of Plaintiffs' personal property inside without a warrant or court order.

20. Virostick Transfer Company (Virostick) at all times relevant to the claims herein was a moving company with offices in Sharon, Pennsylvania, and was regulated by the Pennsylvania Public Utility Commission. As such, its owners had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights or their personal property which was seized without warrant by Virostick with complicit help from the City in August 2000. Virostick and the City ***continue to withhold the property from Plaintiffs despite demands for an inventory and return of the property***.

21. Wodzianski & Smith, Inc., of Franklin, Pennsylvania, and Richard G. English & Associates (English)

of Sharon, Pennsylvania, were hired in October 2000 by the City of Hermitage to inspect and appraise plaintiffs' family home. As such, they had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights. With complicit help from the City, they broke into the Stacey home on October 19, 2000, without a warrant or court order and gathered evidence, and appeared as surprise witnesses against Mrs. Stacey on November 6, 2000.

22. Thomas R. Dobson at all times relevant to the claims herein was a judge of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights.

23. Elizabeth F. Fair at all times relevant to the claims herein was the prothonotary of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was her duty to supervise the activities of her office, employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights.

ADDITIONAL FACTS

24. Helen Stacey was the owner of the large brick building (the family home) located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts, family photos and heirlooms.

25. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

26. On November 6, 2000, the City demolished the Stacey home at 1560 East State Street and destroyed all of Raymond's and Helen's personal property inside. In doing so, the City knowingly destroyed any claims for injunctive relief by the Plaintiffs by ensuring none of the evidence was available for use in gaining access to courts of law for redress

of grievances.

27. The structure was not a hazard to life, health or safety, and not about to collapse, having withstood the heavy snows of three winters and one earthquake.

28. There were alternatives to demolition, including buyers willing to make repairs acceptable to the City.

29. The City demolition occurred pursuant to the Hermitage Property Maintenance Code without providing the Staceys with substantive and procedural due process before their property was seized and destroyed.

30. The City letter of 6/1/2000 sent to plaintiff contains no warning that the City will demolish the home if repairs are not made and does not advise of the right to appeal.

31. Plaintiffs placed three truckloads of dirt into the cellar of the structure to support the foundation, but the City ignored plaintiffs request for an extension of time to continue the repairs.

32. Plaintiffs requested a hearing at the City Board of Appeals from the demolition notice of 8/1/2000 to consider repairs in progress, the sale of the property to a buyer willing to make the repairs, and time to remove vast amounts of personal property from the family home.

33. Attorney White summarily refused to convene the City board, denying plaintiffs the opportunity to be heard on the demolition itself and the procedure for inventory of items to be taken or salvaged, as required by City ordinance.

34. Plaintiffs asked Defendants Ferry and the Watts & Pepecilli firm to file an action in trespass and get an injunction to prevent the demolition. When they failed to act, plaintiffs in a panic rushed to retain Defendant Atty. Cartwright.

35. On August 28 and August 31, 2000, City Police Chief Stanton, City Attorney White, Commissioner White, Inspectors Penn and Osborne, workmen from Penn Power and from Virostick Transfer Co, complicit with others, broke in and searched for evidence without consent, warrant or

court order. Virostick seized personal property of Helen and Raymond Stacey without consent, warrant or court order and continues to withhold the property. At one point, Police Chief Stanton reached through the open front door, grabbed and dragged plaintiff Raymond Stacey outside, threatening him with arrest for defiant trespass if he again interfered in an attempt to save his personal property from seizure.

36. Defendant Virostick Transfer Co. took possession of private property belonging to the Plaintiffs from the Stacey home on August 31, 2000, and continues to hold the property despite a demand for its return. Virostick has not provided Plaintiffs with an inventory of the seized property.

37. The City of Hermitage took possession of private property belonging to Helen Stacey and Raymond Stacey on August 28, August 31, October 19 and November 6, 2000, without inventory of said property, and without providing such an inventory for inspection by Plaintiffs.

38. The City and its personnel and agents were continuing a pattern of threat and violence going back two years when they boarded up the home to keep the family and its contractor out, and took the family pickup truck still in running order to a secret place, while ordering the buyer of the truck off the property with threats of arrest.

39. Judge Dobson issued Plaintiff Helen Stacey a temporary injunction preventing demolition at the cost of a $50,000 bond in favor of the City.

40. The temporary injunction was vacated a few days later by Judge Dobson after a hearing where plaintiffs did not have the opportunity to present testimony of contractors and engineers, together with their reports, because plaintiffs Attorney Cartwright failed to ask for and get a continuance.

41. Plaintiff Helen Stacey, through Attorney Cartwright, filed an immediate notice of appeal in the Mercer County court system which due to misconduct on the part of Judge Dobson and Prothonotary Fair, was not docketed or processed per the Pennsylvania Rules of Appellate Procedure, and Plaintiff's motion for appellate stay was

rejected despite the fact her $50,000 trial bond was still active in favor of the City. The Prothonotary created a conspiracy by agreeing with Judge Dobson (who earlier had ex parte meetings with the City's solicitor about Helen's case), and Defendant Cartwright to refuse to process or perfect Plaintiff Helen Stacey's notice of appeal—once on September 7, 2000, and again on November 6, 2000—which obstructed and denied Mrs. Stacey's immediate access to the appellate courts for effective and meaningful review of the dissolution of the injunction protecting the Stacey home. This failure immediately to perfect Mrs. Stacey's appeal resulted in the immediate destruction by the City of the Stacey home and personal properties.

42. In mid-October 2000, Wodzianski & Smith, Inc., and Richard G. English & Associates, through its owners, employees and agents, with complicit help from the City, its personnel and agents, trespassed by breaking in and searched the Stacey family home without a warrant or court order for evidence to use against Helen Stacey. In the morning of November 6, 2000, Wodzianski & Smith and English gathered with the City at the Mercer County courthouse as surprise witnesses against Mrs. Stacey.

43. In the afternoon of November 6, 2000, the Seredays with the complicit help of the City, its personnel and agents, trespassed by breaking in with force and seized the Stacey property at 1560 East State Street without a warrant or court order, using heavy equipment to demolish the building and destroy personal property inside and to remove material from the premises in violation of the City Code.

44. Defendants Richard and Roseann Sereday took possession of private property belonging to Helen Stacey and Raymond Stacey on November 6, 2000, without inventory of said property, and without ever providing such an inventory for inspection by Plaintiffs.

45. While plaintiff's case was still pending in the state court system, the City in demolishing the Stacey home

destroyed the structure and its contents so it would not be available as a material form of evidence in further proceedings. It was especially important to the City that there exist no evidence that could be inspected since Helen Stacey's engineer was never given the opportunity to inspect the foundations of the buildings for violations of the ordinance because the City had continually denied Mrs. Stacey that right.

46. Defendant Cartwright as Helen Stacey's attorney failed to attend the final hearing on November 6, 2000. He failed to perfect her notice of appeal of 9/7/2000 and failed to secure an appellate stay to protect the Stacey family home.

47. Judge Dobson prevented the processing of Helen Stacey's notice of appeal of 9/7/2000 when the temporary injunction was vacated by the decree nisi which changed the status quo between the parties and is appealable as of right under Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure. The judge had discussions about the case with the City's attorney outside the presence of Helen Stacey or her attorney.

48. On November 6, 2000, when the final decree was entered on the docket, Prothonotary Fair with complicit help from Judge Dobson and Defendant Atty. Cartwright made no effort for the second time to process Mrs. Stacey's notice of appeal of September 7, as required by Rule 905 of the Pennsylvania Rules of Appellate Procedure:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date . . . which date shall be shown on the docket . . . . A notice of appeal filed . . . before the entry of an appealable order shall be treated as filed after such entry and on the day thereof. * * * The clerk shall immediately transmit to . . . the appellate court . . . a copy of the notice of appeal showing the date of receipt.

This perniciously overt act in furtherance of a conspiracy to deprive Mrs. Stacey of Constitutional rights obstructed Mrs. Stacey's access to the appellate courts for meaningful review as guarante[illegible]y the First and Fourteenth Amendments and in violation [illegible] the "remedies clause" of Section 11 of the Pennsylvania Constitution.

49. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed that belonged to Raymond Stacey and cannot be replaced were private papers, tax returns, books, original artwork, collectibles and family photos. The City by destroying these items also destroyed any legal claim for injunctive relief that Raymond had and thereby caused him further injury by denying him access to the courts in violation of the First and Fourteenth Amendments to the U.S. Constitution.

50. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

51. The City has filed a written lien on the property at 1560 East State Street for more than the amount of the demolition cost.

52. The City filed the lien for more than the cost of demolition without providing plaintiffs the opportunity for a due process hearing on whether the lien should be assessed and whether the amount of the lien was proper.

53. The City's imposition of the lien for demolition costs on the property clouds the title to the property.

54. Specifically, the City conspired with defendants Ferry and Watts & Pepecilli and others described above to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the Stacey building that was egregiously nonconforming under the City's zoning law. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by

the City's retaliatory denial to plaintiffs of a building permit to rebuild the nonconforming structure.

55. Defendants acted intentionally, maliciously, recklessly and with a callous indifference to the rights of each of the plaintiffs.

CLAIMS FOR RELIEF

56. Because the actions and omissions of the "malpractice" Defendants (Atty. Ferry and his firm Watts & Pepecilli, and Atty. Cartwright) injured their respective clients, Helen Stacey or Raymond Stacey, Plaintiffs seek damages for those injuries.

57. By demolishing the Stacey home and the personal property of Helen and Raymond Stacey without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the "demolition" defendants", including those who conspired with them, acted under color of state law and deprived the Plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

58. By entering with force on November 6, 2000, and searching the Stacey family home, including Raymond's room and belongings, without warrants or consent, the demolition defendants, including those who conspired with them, acted under color of state law and violated the Staceys' right to be free from unreasonable searches under the Fourth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

59. By entering with force and searching the family home without warrants or consent, and forcibly seizing the Stacey building and the personal belongings of the Staceys without due process of law, the demolition defendants, including those who conspired with them, acted under color of state law and violated the Staceys right to privacy under the Fourth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

60. The respective actions of the "demolition" and "court" defendants (see ¶¶ 3,4), including those who conspired with them, were performed under color of state law, including, but not limited to, entering with force, searching and seizing the Staceys' properties without warrants or consent when no emergency existed, and the breakdown in the Mercer County court system.These actions were arbitrary and unreasonable and as such all the demolition and court defendants, including those who conspired with them, violated the Staceys' right to substantive due process under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

61. In doing the acts and things complained of, the private defendants,i.e., those who had no official status, were engaged in schemes with the state actors which were designed, intended to, and which in fact did, deny and deprive the Staceys of rights guaranteed under the First, Fourth and Fourteenth Amendments to the U.S. Constitution.

Both Helen and Raymond Stacey suffered mental anguish and emotional distress as the result of the destruction of each of their irreplaceable personal belongings which were stored and kept in the family home for many years. Both of them sustained injury as a result of the infringement upon their First Amendment right of access to the courts, and particularly Helen's right to petition the appellate courts for redress of grievances, because the prothonotary, the City's attorney, Judge Dobson and Helen's attorney acted in concert to obstruct the course of justice and prohibit her from challenging by appeal Judge Dobson's order dissolving the injunction protecting her property.

62. Because the "contract" Defendants (Penn Power, Atty. Ferry and Watts & Pepecilli, and Atty. Cartwright) breached their contractual obligations with Helen Stacey and she was injured thereby, her estate seeks damages for those injuries. Further, because Atty. Cartwright breached his contractual obligations with Plaintiff Raymond Stacey and he was injured thereby, he seeks damages for those injuries.

63. Specifically, the demolition defendants, including those who conspired with them, manipulated the City's Property Maintenance Code and the authority granted housing inspectors to accomplish the destruction of the Stacey building. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and was not as aesthetic as the City would have liked it to be. The City's denial to plaintiffs of a building permit to rebuild the nonconforming structure was retaliatory in nature.

64. The City of Hermitage's unilateral determination of the demolition charges and imposition of a lien against the Stacey real estate for the collection of the charges has injured the Plaintiffs by impairing title to the property. The City's failure to provide Helen Stacey a due process hearing prior to the assessment of the demolition charges and the imposition of the lien on her real property to secure the payment of those charges violated the due process requirement of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

Without discovery, Plaintiff Raymond Stacey cannot plead with greater particularity at this time, so he cannot set forth exactly how each defendant acted in concert with the others in infringing upon his and his mother's constitutional rights. Information crucial to proof of these claims is in the custody and control of the Defendants. Plaintiff Raymond Stacey has endeavored to develop such claims so as to show that he and his mother's estate are entitled to relief and such claims upon which relief can be granted. Plaintiff Stacey relies on liberal federal discovery rules to define all disputed facts and issues. Any expectation of complete factual sufficiency without discovery is premature or impossible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court grant the following relief:

Enter a declaratory judgment to the effect that Plaintiff Helen Stacey was entitled to an appeal as of right from the decree nisi issued in her state court case pursuant to Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure, and further enjoin Judge Dobson from deliberate frustration of appellate rights of future litigants in his court.

Enter a declaratory judgment stating that the application of the terms of the Hermitage Property Maintenance Code in the future to owners of private property to the effect that seizures of property should not take place without adequate notice, judicial order of record, warrant or consent. Any use of the Code by the City or its agents without adequate Constitutional forms of protection is arbitrary and unreasonable.

Enter an injunction ordering the City of Hermitage, Virostick Transfer and the Seredays to provide an inventory to Plaintiffs of the property which was seized by these Defendants at 1560 East State Street, and further enjoin these Defendants from continued illegal retention and possession of such property belonging to the Plaintiffs.

Enter an injunction prohibiting the foreclosure of the City's lien on plaintiff's property and order the City to remove the lien for demolition charges from all public records.

Enter judgment for the plaintiffs against defendants for compensatory and punitive damages.

Enter an order that defendants pay court costs and attorneys' fees in this action pursuant to 42 U.S.C. § 1988.

Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Date: [August 21, 2006],
Monday

s/ Janice Haagensen
Janice Haagensen
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Raymond Stacey and
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Enon Valley, PA 16120
Tel 724 336-5962

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues.

s/ Janice Haagensen
Janice Haagensen
Counsel for Plaintiffs
Raymond Stacey and
Estate of Helen Stacey

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2:02-cv-1911

RAYMOND STACEY, Individually and as Co-Executor of the Last Will of Helen Stacey,
Plaintiff,

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually; EDWARD STANTON, Individually; RUSSELL V. PENN, JR., Individually; JEFFREY OSBORNE, Individually; ROBERT S. GOELTZ, Individually; JAMES PAT WHITE, Individually; THOMAS W. KUSTER; H. WILLIAM WHITE, III; ECKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; RICHARD SEREDAY, ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court for consideration and disposition is PLAINTIFFS' MOTION FOR RECONSIDERATION BY THE COURT OF ITS ORDERS OF AUGUST 1 AND AUGUST 2, 2006, DISMISSING DEFENDANTS AND CHANGING THE CAPTION *(Document No. 107)*. Plaintiffs have also submitted an AMENDED COMPLAINT *(Document No. 109)*. Defendants Fair and Ekker, Kuster McConnell & Epstein have filed

MOTIONS TO DISMISS *(Document Nos. 117, 119)* and supporting briefs. The "City Defendants" have filed an ANSWER *(Document No. 123)*. Plaintiff has filed a MOTION FOR LEAVE TO REPLY, AND THE REPLY *(Document No. 122)*. Plaintiff's MOTION FOR LEAVE TO FILE REPLY *(Document No. 122)* is GRANTED and the arguments made therein have been considered by the *2 Court. After full consideration of these documents and the responses filed by defendants *(Document Nos. 111, 113, 114, 115 and 116)*, and the opinion of the Court of Appeals dated April 19, 2006, the Court will DENY Plaintiff's MOTION FOR RECONSIDERATION and will STRIKE the AMENDED COMPLAINT. Accordingly, Defendants' MOTIONS TO DISMISS *(Documents 117, 119)* will be DENIED AS MOOT and the ANSWER *(Document No. 123)* will be STRICKEN AS MOOT.

This case arose from the condemnation and subsequent destruction of Plaintiffs' home. The case has been embroiled in extensive legal wrangling and has been the subject of two opinions from the United States Court of Appeals for the Third Circuit ("Court of Appeals"). The Court of Appeals remanded the case to this Court for further proceedings consistent with its opinion dated April 19, 2006, certified and issued in lieu of a formal mandate on July 26, 2006 *(Document No. 103)*. On August 1 and 2, 2006, this Court amended the caption of this action to reflect the rulings of the Court of Appeals *(Document Nos. 104, 105)*. The Court also ordered Plaintiff to file an amended complaint "limited to the recited surviving claims for the relevant time period(s) set forth in the Opinion and plaintiff must demonstrate standing for all claims and plead in a more definite manner with specificity regarding 'the parties to whom he refers with respect to the remaining claims.'"

Contrary to Plaintiffs' contention, the Court of Appeals resolved the various arguments raised in motions to dismiss

on the merits. The Court of Appeals concluded that the only claims which survived the motions to dismiss were:

> (1) claims under § 1983 against the City defendants and Sereday arising from the demolition; (2) claims under § 1983 against the City defendants arising from the imposition of the lien against the Stacey property; and (3) legal malpractice claims against the Staceys' attorneys. Opinion dated April 19, 2006 at 14.

*3This Court and Plaintiff are bound by the rulings of the Court of Appeals which authorized Plaintiffs to amend the complaint only in two limited respects – to afford Raymond Stacey an opportunity to demonstrate standing, and to specify the parties to whom he refers with respect to the remaining claims. *See* Opinion dated April 19, 2006 at 9, 11. In all other respects, the decision whether or not to permit amendment to the complaint is within the discretion of this Court and leave to amend must be sought by filing an appropriate motion. Fed. R. Civ. P. 15(a).

Plaintiffs' proposed Amended Complaint fails to abide by this Court's Orders and is not consistent with the Court of Appeals' Opinion. Plaintiffs have not sought leave to amend. Indeed, Plaintiffs boldly proclaim that they intend to pursue claims whether or not those parties are listed as defendants in the recast caption. Motion for Reconsideration ¶ 15. Plaintiffs' approach and action in filing the proposed Amended Complaint are totally without authorization. Accordingly, the AMENDED COMPLAINT will be STRICKEN.

Plaintiff shall have the right to file a second amended complaint, limited strictly and solely to the claims authorized by the Court of Appeals, within eleven (11) days of this Order. In the alternative, to the extent that Plaintiffs seek to assert any other claims, they must file an appropriate motion for leave to amend within eleven (11) days of this Order.

Defendants shall file responses thereto within ten (10) days thereafter. Counsels' attention is directed to the opinion in *Day v. Moscow,* 769 F. Supp. 472 (S.D.N.Y. 1991), which involved a similar procedural posture.

McVerry, J.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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Plaintiff,

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually; EDWARD STANTON, Individually; RUSSELL V. PENN, JR., Individually; JEFFREY OSBORNE, Individually; ROBERT S. GOELTZ, Individually; JAMES PAT WHITE, Individually; THOMAS W. KUSTER; H. WILLIAM WHITE, III; ECKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; RICHARD SEREDAY, ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents,

Defendants.

ORDER OF COURT

AND NOW, this 6th day of September, 2006, in accordance with the foregoing Memorandum Opinion, PLAINTIFFS' MOTION FOR RECONSIDERATION BY THE COURT OF ITS ORDERS OF AUGUST 1 AND AUGUST 2, 2006, DISMISSING DEFENDANTS AND CHANGING THE CAPTION *(Document No. 107)* is **DENIED** and the Amended Complaint *(Document No. 109)* is **STRICKEN.** Plaintiffs may file a second amended

complaint or an appropriate motion for leave to file an amended complaint as aforesaid. Plaintiff's MOTION FOR LEAVE TO FILE REPLY *(Document No. 122)* is **GRANTED.** Defendants' MOTIONS TO DISMISS *(Documents 117, 119)* are **DENIED AS MOOT** and the ANSWER **2(Document No. 123)* is **STRICKEN AS MOOT.**

BY THE COURT:

s/ Terrence F. McVerry
United States District Court
Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case Number: 03-4176

Case Name: Raymond Stacey, Appellant
v.
City of Hermitage, et al.

INFORMAL BRIEF

DIRECTIONS: ***Answer the following questions about your appeal to the best of your ability. Use additional sheets of paper if necessary. You need not limit your brief solely to this form, but you should be certain that any brief you file contains answers to the questions below. The Court prefers short and direct statements.***

1. Jurisdiction: What order(s) of the district court are you appealing?

Memorandum Order

What is the date of the order(s)? September 22, 2003

When did you file your notice of appeal?
October 22, 2003

2. Statement of the case: Explain the proceedings in the district court (i.e. what the district court did in deciding your case).

I am Raymond Stacey the appellant on appeal *pro se* and file this informal brief. . . .

On November 6, 2000, without notice or warrant, the City of Hermitage seized and destroyed the Stacey family home and all its contents with the help of the other defendants in violation of civil and criminal law.

On the 2-year anniversary of the event, November 6, 2002, I filed a Complaint in district court in Pittsburgh for myself and my mother, Helen Stacey, for damages against

the City and the other defendants as co-conspirators in the destruction of the Stacey property.

We had to sue *pro se* and continue alone because we were unable to find legal representation. [1]

In May last year, my mother passed away and I was substituted in her place as co-executor of her last will. In June the district court issued an order for briefs on defendants' motions to dismiss. I got an extension of time, but failed to file a brief because I was too distressed over my mother's death and too inexperienced to prepare the brief, being unable to find counsel for help. The rules were written for lawyers, not unemployed, retired, steelworkers like myself.

From reading the district court's briefing order I thought a brief was not absolutely necessary and that the court would rely on our Complaint in deciding the issues and motions:

---

[1] In addition to redressing governmental abuse, this case is a condemnation of the legal profession in Pennsylvania. I wrote over 300 letters for legal representation without success. Even the Mercer County Bar Association and its president, now judge, Atty. John Reed did not have the courtesy to answer our letter.

To begin, we paid over $10,000 to Atty. Michael Rosenfield of Pittsburgh, who refused to file for an injunction and an action in trespass. Next we retained the Defendants Watts and Atty. Ferry of Meadville, and they refused to file for an injunction and an action in trespass. Then I retained Atty. Shawn Sensky of New Castle who avoided me and, like, disappeared. Finally, we paid over $7,000 to Defendant Atty. Jerry Cartwright, $6,000 to Atty. Armand Cingolani III of Butler, and $8,000 to Atty. James Manolis of New Castle—a lot of money we could have put to good use by repairing the family home. But these attorneys left us to dangle when it came time to file this suit. Atty. Manolis took the money and did not file one single document in any court.

With its political and economic power in the County, the City of Hermitage has put new meaning in the expression "You can't fight city hall!" They say "Jump!" and expect or force you, the citizen, to say "How high?", so no jury will ever hear about the City's criminal and quasi-terroristic activities.

> Any motion not responded to . . . will be decided on its own merits ***without a response***. Any claim not addressed in an omnibus response will also be decided on its own merits ***without a response***. (Emphasis added . . .).

Last September, the district court dismissed the case, and this timely appeal was taken.

3. Statement of facts: Explain the facts and events that caused you to file your complaint in the district court.

In 1997, heavy rains flooded the cellar of the Stacey family home in Hermitage, Pennsylvania, where my parents had lived for over 50 years. Defendant City of Hermitage declared the building a dangerous structure because of building code violations and forced my parents to leave and live in another state, Ohio, where my dad died at age 92 in 1998.

My mother, then 89, retained the law firm of Defendants Watts & Pepicelli and Atty. Ferry. They were supposed to handle her problems with the City and help sell the property. (Compl. ¶¶ 12, 13, 28, 30 [. . .]). A hearing was held and the City board declared the Stacey building a public nuisance. My mother appealed the decision thru Watts and Ferry to the Mercer County Court Of Common Pleas.

In April 2000, the state court affirmed the board that the home was a public nuisance. There was no further appeal by my mother, who wanted to repair the building and return home to live there again. Several people were making inquires to buy the property.

Meanwhile, the City was making plans to destroy the Stacey building.

In July 2000, the City formed a conspiracy with

the Defendants the Seredays who contracted to demolish the Stacey home without first getting a warrant or court order as required by City law. (Complaint ¶¶ 15, 31, 37 [. . .]).

Then, my mother's attorneys, Defendants Watts and Ferry, joined the conspiracy by agreeing to the City's schedule of demolition for the Stacey home. Acting against my mother's interests and contrary to their contract with her, Watts and Ferry refused to file an action in trespass and get an injunction to protect the home. They also failed to take any steps to sell the property for my mother. (Compl. ¶¶ 12, 13, 28, 30 [. . .]).

In August 2000, my mother and I each filed an appeal to the City pursuant to City law for a hearing to consider (1) the sale of the property to a buyer willing to make repairs and (2) the security of our personal property still inside the building. My mother's appeal was refused by Defendant Atty. White, acting on behalf of the City solicitor, Defendant Kuster of the Defendant law firm Ekker, Kuster & McConnell. Atty. White and the City did not have the courtesy of giving me an answer to my appeal. (Compl. ¶¶ 28, 29 [. . .]).

In August and October 2000, without warrants as required by City law, the Defendant City, its agents and employees, and other defendants trespassed on the Stacey property and illegally broke into and entered the family home. (Compl. ¶¶ 17, 31, 36 [. . .]). As part of the conspiracy to demolish the Stacey family home, the City defendants included City Manager Hinkson, Police Chief Stanton, Fire Chief Goeltz, Building Inspectors Penn and Osborne, Commissioner White, and Atty. White. Other co-conspirators complicit in the City plan included Defendants Virostick Transfer, Penn Power, the

Seredays, Wodzianski & Smith, and Richard English & Associates.

The City defendants illegally gathered evidence against my mother without giving our engineer and appraiser an opportunity to inspect.

Virostick illegally took and kept personal property from my mother and myself without notice to us. (Compl. ¶¶ 17, 28 [. . .]).

Penn Power illegally disconnected electric power to the building without notice and failed to restore it. So we were unable to continue repairs or to show the building to prospective buyers or to remove personal property. These actions of Penn Power violated state law and breached the contract they had with my mother to provide continuous service which resulted in damage to us. (Compl. ¶¶ 14, 31 [. . .]).

The Seredays illegally left heavy equipment on the property without permission. (Compl. ¶¶ 15, 31, 37 [. . .]).

Wodzianski & Smith and English illegally gathered evidence against my mother. (Compl. ¶¶ 17, 36 [. . .]).

When Defendants Watts and Ferry refused to file an action in trespass against the City, we retained Defendant Atty. Cartwright to protect our interests in the property. He filed a petition with the Mercer Court asking for an injunction and a hearing at the City board as required by City law. (Compl. ¶¶ 13, 30 [. . .]).

On September 5, 2000, Defendant Judge Dobson denied my mother's injunction after he allegedly had ex parte discussions with City attorneys. (Compl. ¶¶ 34, 35, 40 [. . .]). We insisted that Atty. Cartwright take an immediate appeal and get a stay. Both were filed a few days later.

Judge Dobson denied the stay and rejected the

appeal, stating his decree nisi was "interlocutory." After talking ex parte with the judge, Defendant Prothonotary Fair refused to process my mother's notice of appeal in violation of appellate rules. (Compl. ¶¶ 19, 35, 41 [. . .]). The Prothonotary returned it to Atty. Cartwright who, thru ignorance or agreement with her, disregarded our instructions and refused to pursue the appeal without informing us. (Compl. ¶ 39 [. . .]). With no appeal or stay in effect, the Stacey home was unprotected and vulnerable to every whim of the City.

On November 6, 2000, our same attorney, Defendant Cartwright, failed to attend the final court hearing on my mother's injunction. (Compl. ¶ 39 [. . .]). Defendants English and Wodzianski were there ready to testify for the City against my mother. She was not given any notice or time to prepare for this surprise testimony. (Compl. ¶¶ 17, 36 [. . .]). We did not even know the family home had been illegally invaded again by the City with these experts. We were denied any opportunity to have our engineer and appraiser inspect the property (Compl. ¶ 38 [. . .]). , and after the property was destroyed that same day, we were denied forever the value of the property and the opportunity to inspect or enjoy it ever again.

A few hours after the court hearing that same day, November 6, 2000, without notice to us and again without a warrant as required by law, the City violently invaded the Stacey property with heavy equipment and smashed down the family home. (Compl. ¶ 37 [. . .]). Those principally involved include Defendants Atty. White, the Seredays, and Inspectors Penn and Osborne. They completely seized and demolished the Stacey family home with an excavator and destroyed or took all the personal property inside and outside belonging to my mother

and myself.

The City changed the status quo forever knowing of our desire to appeal the denial of the injunction by Judge Dobson and without any opportunity for our engineer and appraiser to inspect the building for later proceedings. (Compl. ¶ 38 [. . .]).

Months later, the City thru its solicitor Defendant Atty. Kuster filed a lien against the Stacey property for over $13,000 for costs of demolition. (Compl. ¶¶ 44, 45, 46 [. . .]). The actual cost of the demolition by the Defendants Seredays was less than $3,000. This was done without notice or an accounting to my mother and without any opportunity for a hearing as required by City law.

4. Statement of related cases: Have you filed an appeal in this case before? If so, give title of case and docket number.

Not applicable

Do you have any cases related to this case pending in the district court or the court of appeals? If so give title of case and docket number.

Not applicable

5. Did the district court incorrectly decide the facts of your case? Yes If so, what facts?

In addition to allegations and inferences of facts set forth above and incorporated here of conspiracy and warrantless seizure and destruction of the Stacey property, our Complaint alleges and infers facts of:

- legal malpractice against Defendant Atty. Cartwright (Compl. ¶¶ 34, 39 [. . .]) with diversity of citizenship and proper damages.

- breach of contract with diversity of citizenship and proper damages within the four year statute of limitation against:

  1) Defendant Cartwright (Compl. ¶¶ 34, 39 [. . .]),

  2) Defendants Watts and Atty. Ferry (Compl. ¶¶ 12, 13, 28, 30 [. . .]),

  3) Defendant Penn Power (Compl.¶¶ 14, 31 [. . .]);

- the City's failure to provide hearings under City law on the destruction of our personal property and the lien levied against the real property. (Compl. ¶¶ 28, 29, 44, 45, 46 [. . .]).

- Continuing trespass and theft, including conspiracy under state law and withholding property from us on demand. (Compl. ¶¶ 31, 37, 42 [. . .]).

None of these issues was addressed below by any defendant or by the court, and the court did not specify by category the reasons for dismissal. . . .

6. Did the district court apply the wrong law (either cases or statutes)? **Yes**

If so, what law do you want applied?

The district court erred in dismissing our case by failing to accept as true the allegations in our Complaint and all reasonable inferences in our favor. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). The court failed to demonstrate that no relief could be granted under any set of facts that could be proved. *Gould Elecs., Inc. v. United States,* 220 F.3d 169, 178 (3d Cir.2000).

The complaint is the most important document in federal civil litigation (Fed.R.Civ.P. 3) and the court below should have considered our complaint more seriously. The word "complaint" or "allegation" or "inference" does not

even appear in the court's Memorandum Order of dismissal.

. . .

The court erred in not construing the Complaint for us liberally as pro se litigants. A *pro se* complaint must be liberally construed and held to a less stringent standard than formal pleadings. *Estelle* v. *Gamble,* 429 U.S. 97, 97 S.Ct. 285 (1976). A *pro se* action can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle* at 106, 97 S.Ct. at 292. Dismissing an action with prejudice fails to give the complaint the liberal construction that is due pro se litigants. Jubilee *Jubilee v. Horn,* 959 F.Supp. 276, 278 (E.D.Pa. 1997). Manifest injustice and clear error of law should be corrected. *North River Ins. Co. v. CIGNA Reinsurance Co.,* 52 F.3d 1194, 1218 (3d Cir. 1995).

The district court should have given us an opportunity to amend the Complaint. Under Federal Rule of Civil Procedure 15(a), leave to file an amended pleading shall be "freely given when justice so requires." *Foman v. Davis,* 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962).

The court below also failed to issue a final judgment as required by Rule 58 to avoid our guessing as to which Rule to follow in challenging the court's decision.

7. Are there any other reasons why the district court's judgment was wrong? _____

If so, briefly state these reasons.

Do not know.

8. What action do you want the Court of Appeals to take in this case?

Appellant pro se prays that this Court:

- Reverse the district court and vacate the order of dismissal.
- Order the court below to follow the liberal standard for pro se litigants in deciding the motions to dismiss and to issue a final judgment to avoid confusion.
- Allow us . . . the opportunity to amend flaws in our complaint so we can proceed to discovery.

s/ Raymond Stacey
Signature 2-9-[04]

You may attach any documents filed in the district court that you think the court of appeals must see in order to decide your appeal. Please keep in mind that the entire district court record is transmitted to the court of appeals and is available for the court's review. You must attach copies of the district court docket entries, the opinion and order appealed, and the notice of appeal. Documents not admitted in the district court may not be submitted to the court of appeals without permission of the court.

IMPORTANT: IF YOU ARE PROCEEDING [ ] IN FORMA PAUPERIS, YOU MUST FILE AN ORIGINAL AND THREE (3) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. IF YOU HAVE PAID THE DOCKETING FEE, YOU MUST FILE AN ORIGINAL AND TEN (10) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST ALSO BE SENT TO ALL OPPOSING PARTIES

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[July] 17, 2006

No. 03-4176

RAYMOND STACEY, Appellant

v.

CITY OF HERMITAGE, et al.

(U.S. District Court for the Western District of PA:
No. 02-cv-01911)

Present: RENDELL, AMBRO and FUENTES, Circuit Judges

1. Motion by Appellant, Raymond Stacey, for Recall of Mandate and for Appellate Costs and Attorney Fees.
2. Response by Appellees, Penn Power Co. And Ohio Edison Co., to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.
3. Response by Appellees, Richard Sereday and Roseann Sereday, to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.
4. Response by Appellee, Virostick Transfer Co., to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.
5. Response by Appellees, City of Hermitage, et al., to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.
6. Response by Appellees, Ekker Kuster McConnell & Epstein LLP, Thomas W. Kuster and William White, to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.
7. Response by Appellee, Elizabeth F. Fair, to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.

8. Response by Appellee, Wodzianski & Smith, Inc., to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.

9. Response by Appellees, Watts & Pepicelli, P.C. and Christopher D. Ferry, to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.

10. Response by Appellee, Jerry Cartwright, Jr., Esq., to Appellant's Motion for Recall of Mandate and for Appellate Costs and Attorney Fees.

/s/ Aina R. Laws
Case Manager 267-299-4957

ORDER

Upon consideration of the foregoing motion and responses thereto, it is hereby ORDERED:

(1) Appellant's motion for recall of the mandate is DENIED.

(2) Appellant's motion for attorney fees is DENIED; the motion for appellate costs in the amount of $300 is GRANTED.

BY THE COURT:

/s/ Marjorie O. Rendell
Circuit Judge

Dated: July 18, 2006

ARL/cc: Mr. Raymond Stacey; All Counsel of Record

Jerry G. Cartwright,Jr.
Attorney at Law

125 E. North Street
Suite 214, Temple Building
New Castle, PA 16101

Phone (724) 658-9931
Fax (724) 658-1390

May 18, 2001

Ray Stacey
123 Hickory LNSW
Warren, Ohio 44481

Re: Stacey vs. City of Hermitage

Dear Ray,

Enclosed please find the Notice of Appeal that was filed September 7, 2000.

Please note I received a call from the Prothonotary's office informing me they inadvertently filed this before the Judge's Order came down. After the Judge's Order came down it was discovered it was a Decree Nisi, and in their opinion, I believe the Judge thought that issue he ordered was non-appealable.

It is my recollection that at the hearing of September 5th, the Judge never used the word Decree of Nisi, but he did use the words Order of Court.

Sincerely yours,

s/ Jerry G. Cartwright Jr
Jerry G. Cartwright, Jr.,
Esquire

JGC/smg
Enclosure(s)